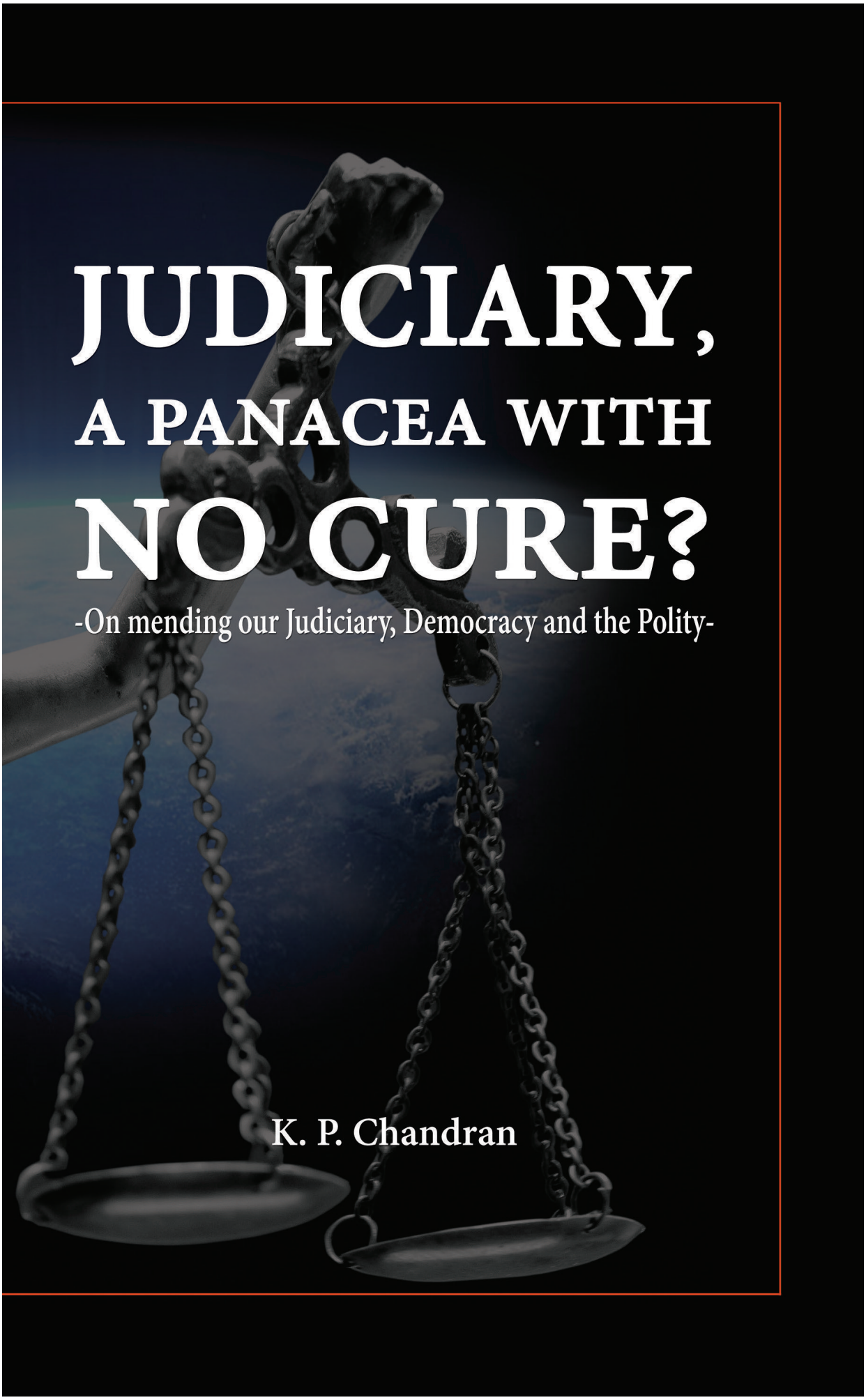
JUDICIARY,
A PANACEA WITH
NO CURE?
-On mending our Judiciary, Democracy and the Polity-
K. P. Chandran

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-On mending our Judiciary, Democracy and the Polity-

Chandran

JUDICIARY, A PANACEA WITH NO CURE?
-On mending our Judiciary, Democracy and the Polity-

by

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Dedicated to the cause of
the suffering Indians and of
the suffering humanity all over
the Mother Earth

Gratitude:

Sri. Abdul Raheem Puthiya Purayil, my companion and philosopher

Adv. Sri. M.K. Moosakkutty, Tirur

Adv. Sri. N.K. Sachindranath, Mahe

Adv. Sri. V. Padmakumar, Tirur

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FOREWORD

The strength of any sublime system lies in its ability to critically introspect, identify its weakness and to innovatively overcome such weakness. It is doubtful whether the legal / judicial system in India has been able to achieve this. I refuse to believe that Indian legal ingenuity is unequal to the challenge before it. We need to promote open, frank, candid and dignified disagreement even if it be fierce and even if we do not completely agree with the criticism or the manner in which it is expressed.

It is in this view of the matter that I see and welcome the attempt of Advocate Shri K P Chandran, a functionary in the system at the grass root level to critically evaluate the functioning of the Indian legal system. May this open the doors of enlightened introspection and lead to improvement of the quality of justice dispensation.

BASANT R
10.12.2016

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A word….

Democracy is not a stage for sporting over something between the extremes of good and bad, or the best and worst, as politicians propagate it whenever they set out for contesting public elections. It cannot be an either-growth-or-no-growth-at-all state of things for the people as our politicians misrepresent it. Democracy is instead competing for the better ones or for the best ones among the better ones and the best ones, essentially at the instance of the Virtuous and the Wise in their race for fetching welfare and well-being for the people. It is meeting of minds and collective effort. It is not 51 people for good and 49 for the bad or vice versa; it is 51 for the best and 49 for the best of the better. If that is not how we experience democracy, then democracy is only a struggle and mishap for the people just like what it is for them today, unfortunately. In that event, we definitely need to reroute the track of our so-called race for relieving our people from their wretched and miserable living conditions. Everyone must take part in that race along the rerouted track. None can be an odd one out, power wielders definitely ever, never.

My love for democracy and the hope it presents to me and to the world is my inspiration. The setting of our democracy is such that there will be no democracy in our country in the absence of a dynamic and vibrant judiciary that is inspired and activated by its commitment to the "ideal of justice" loaded with a prettier amount of "sense of justice". And it is a fundamental fact that only with

these laudable 'ideal' and 'sense' of justice in store, the Judiciary, the cleansing and purifying mechanism in our structure, political as well as social, will be able to accomplish its sworn objective of justice dispensation. Less 'the ideal' and 'the sense' to run as its lubricants, the cleansing mechanism is only a network of drainpipes clogged up by filth and rot.

Judges and lawyers, the indivisible and integral duo of the Judiciary, with their uncompromising commitment to the lofty "ideal of justice" and with their sharpening repository of "sense of justice", must take on the challenge to save our Judiciary, our people and our democracy, all at the brink of their peril. Now it is high time. Deprivation in "the lofty ideal" and "the sharpening sense" is no excuse for the duo. Justice ought to be the essential ideal for judges and lawyers. They must be wedded to justice.

It is crucial that a down-to-earth perception and perspective of the Judiciary is out of the way for some or other reason. We should get rid of the entire archaic, feudalistic, monarchical and colonial hangover clinging across the edifice of the Judiciary and running counter to its untroubled operation. The greatness and majesty of our Judiciary dwells in the sole fact that it is a democratic institution, a marvellous creation of the Indian Constitution. And so, it must be nearer to the people, rather close to the people… at the service of the people revolutionising their lives in the lines drawn up by the Constitution strictly in conformity with democracy and its inviolable principles.

Chandran

JUDICIARY, A PANACEA WITH NO CURE?

-On mending our Judiciary, Democracy and the Polity-

CHAPTER - 1

Democracy, the Rule of Law and the Judiciary

Democracy, the Rule of Law and the Judiciary

Freedom, unfortunately, is a philosophy than a reality for man. Even liberty, the institutionalised freedom, is a principle than a fact for him. Anyhow, dropping freedom, the sour grapes, by the wayside, man has preferred liberty for his emancipation and fulfilment. Democracy…., its magnificence is that it carries this liberty in its womb offering and attempting to extend to man the finer world of liberty. Man, common man of course too, is able to dream he decides his destiny; this is the finest aspect of democracy. At least, his bread is his right there. So millions and millions of people all over the world cherish democracy as a means for food and shelter, and for self-respect and personal freedom as well.

Democracies, however, present a dim, hopeless picture everywhere. The only reason is simply the reins of power are not actually in the hands of the people. The reins have been grabbed from the hands of the people by the crooked ones by employing versatile techniques

garnered by them for manipulating and subduing people. Democracy to be people's rule in real terms, people should see to it that it is they who actually rule, though through their representatives. Democracy is the duty and responsibility of the people themselves. Therefore, it's for the people to regain the lost power by having recourse to democratic means and to repose the same in the safe and suitable hands of somebody who would wield it accountably on behalf of them (people) as their delegates or representatives.

Again, democracy fails only for one reason- people are not aware who they are and how powerful they are in democracy. Educating and sensitising people of their rights and entitlements, their duties, obligations and responsibilities as well, under democracy would prepare them for democratising the setup actually at work- a real-time democracy diametrical to Utopian democracy or a dysfunctional democracy. It is a fruitful democracy from the point of view of the common man.

Now, because we have decided we would thrive as a democracy under our unparalleled Constitution, what needs to be taken care of is to see that our people are able to 'recognise' at least the fundamentals of our Constitution. Still, what our people are lacking in most is Constitutional Literacy. People are not even able to remember that they have a Constitution governing their life, implying that they are unaware even of the basic rights they are entitled to in our country. They even don't know whether they are entitled to some such rights at all. And this ignorance is the basic reason why people

remain unresponsive and mostly unsuitable for a democratic political setup like ours.

Therefore, undoubtedly, sensitising people on the message of the Constitution is the greatest political and social movement or activity that needs to be resolutely undertaken for empowering our people. Without upholding our Constitution we cannot achieve anything as a Nation. So our patriotism, if we do have it genuinely, needs to be reflected in our love for our top-drawer Constitution and in our relentless endeavour in actualising the dreams of the Constitution. Legally, our Nation is the creation of our Constitution. If we don't have respect for our Constitution, there is no much sense in any blowup in the name of our Nationalism, National Flag, National Anthem etc.

As to patriotism, it is the "Home, Sweet Home" emotion. You need to work for making your home pleasant and tidy for staying therein so that it irresistibly arouses in you the emotion "Home, Sweet Home". Our pride that our forefathers have given down to us a sweet home is not patriotism if we are not working for keeping the home neat and sweet as our forefathers had worked for preserving it neat and sweet. Our soil is dying... we don't care, our sky is becoming hot stove... we don't care... and panicked, water runs away from us...we don't care. Still, we are great patriots and Nationalists! And the whole body of our Mother Earth is full of these 'spirited' patriots and Nationalists.

Side by side, Global conflagration is on the verge... but 'the wise', man is busy filling up his bottle of 'development' to the brim and over the brim! And where

is our (Indians) philosophy of live and let live? Where is our holistic vision and prayer for well-being of the whole universe reflected in "Loka samastha sukhino Bhavanthu..."? And who taught us the lesson that man is the centre of Brahma? A true Indian cannot lead his life in complete forgetfulness of the eternal lessons imparted by Great Sages. We don't hate anybody. We don't find anybody inferior to us. And, are we not actually cosmopolitans in our view, then? We find divinity in everything, everywhere and in everyone. Even matter and spirit are not different for us. We cannot forget all these lessons when we majestically say we are Indians. We do stand for the welfare of the whole world. Our canvass is the Universe itself. The whole world is one family- "Vasudhaiva Kutumbakam" is the eternal truth that we embrace. We believe the whole biosphere is part of our being and existence. We know only to embrace everything; no hatred, no antagonism and no intolerability. And we should remember that this is a different voice that India only can articulate and voice in the world.

Once again we need to advert to democracy. Indubitably, democracy is not, as it is now staged all over the world, an ideology evolved or emerged out of the 'pressing need' of the avaricious to have a convenient instrumentality that enables them amass wealth easily and uninterruptedly by manipulating people and power, of course, without any active resistance from people. This sort of abuse and manipulation is the most serious challenge that democracy now faces all over the world. No lover of democracy can remain idle in this situation if he/she wants to preserve democracy as an ideology "of

the people", "for the people". See, ideology is never a barrier for the rich and the creamy. They thrive under any ideology. So, from the point of view of democracy, the word 'people' connotes mostly the common man and the downtrodden.

Unfortunately, as indicated above, democracy has become an easy tool for the affluent for accumulating wealth from any corner of the globe by simply sitting in their own mansions wherever they are. They 'celebrate' democracy always. And they themselves 'champion' democracy every time! The have-nots are ever being subjected to exploitation by some way or another invariably and constantly as if it is their irreversible destiny. It cannot be so forever. They need to work for regaining the lost democracy by making use of democracy and thereby they would rewrite their destiny. Democratic people need to remember that in democracy there is nobody else except people themselves for taking care of the people or for transforming their own life.

Now, the first and the last word in democracy is nothing apart, or different from, the will of the people. Therefore, in democracy law is, or rather ought to be, nothing but exclusively the will of the people. Democracy consists, practically, in disempowering human rulers and enthroning law in their place to take care of the people and their affairs through people's servants, the human elements, our representatives and public servants, on the steering wheel in the machinery of democracy.

Adopting this as our policy, we, the people, have enthroned 'our will', the law, the Constitution, as our 'Lord' to rule us. So we all are to be governed, to be

governed only, by the law, which is our will. It is just like occurring nothing in our country against law, the will of the people. In this sense Rule of Law is the other name for democracy because, as noted, what is supreme in democracy is nothing but law, which, again, is nothing but the will of the people. Is democracy not 'Lawocracy', then?

Therefore, undoubtedly, democracy would start fetching its fruits only when Rule of law is actually brought into practice. Law itself is the only tool and tooth and arm and armour at the command of the people for ensuring for themselves that nobody goes or grows beyond the rule and power of law. Are we ready for taking the responsibility holding law in our hands...? A better world to live in is awaiting… at least no infant dies of hunger in that world. Law in democracy is powerful enough for a bloodless revolution against exploitation, oppression and subjugation of body, mind and matter, if not absolutely mighty for social engineering or for changing the mindset altogether.

And what is the magical principle that is working behind all these fruitful elements democracy possesses? There are no rulers at all in democracy is the very distinctive principle that is working behind democracy making it unique and hopeful. The people are the only dominant entity in democracy and the people do not share their dominance with anybody in democracy. Therefore there are people's representatives and servants only in democracy. Rulers are alien to it. No ruling class and no interests of the ruling class, only people's interests sought to be secured by law made by people. Therefore, we need

to believe in democracy and the efficacy of law in that setup in their realistic and practical sense. People's representatives and servants are only people's workforce through which they seek to protect their interests.

It seems now relevant to deal here with a closely related point in order to make our vision clear and realistic as to what Constitution and democracy should mean to us. Constitution is the supreme for us, no doubt. Still, one question is pertinent. Which is superior, democracy or the Constitution? No doubt at all, for obvious and profound reasons democracy, and not the Constitution. Then, why Constitution is the supreme for us? Only because, it presents us with a form of government based on democracy and it strives to complete democracy in our whole life as a Nation in all possible ways and means. We are bound to preserve and safeguard our supreme Constitution because it is our dire need as a Nation to preserve and safeguard the superior democracy guaranteed to us by our Constitution. By being subservient to the Constitution in letter and spirit we are preparing our democracy to make it most meaningful in the day-to-day life, as well as in the ultimate evolvement and transformation, of every citizen of our country. In short, our Constitution is our means designed by us for developing ourselves into a full-fledged democracy where people's life is safe, secure and prosperous.

Let us now turn to one most important cornerstone of democracy relevant for the purpose of our discussion. The right of Self-determination of the people as a nation being the foundation of a democratic form of government,

what needs to be preserved there primarily for the people is nothing but the very same right of self-determination, because democracy meets its end when people lose their right to determine for themselves by themselves. Apparently in no other forms of government people possess this most precious right of self-determination. In all other forms, ultimately 'the ruler' determines 'selfly' for himself as well as for all others. So, the intent of the Constitutional Law is ultimately to establish and affirm the most precious right of self-determination of the people, for the people. And the only way dictated by the Constitution for preserving that 'fundamental right' of the people is to ensure Rule of Law. That is why Rule of Law is precisely one of the basic features of the Constitution. It is actually the foremost among the basic features. It's the lifeblood of the polity and people.

Therefore, the primary duty of the State set-up under the Constitution is to ensure Rule of Law and the prime agency appointed to assist the State in that supreme task is the Judiciary. Naturally, if Judiciary fails in its appointed duty, the Rule of Law fails and the failure of Rule of Law is the failure of democracy itself. Hence, Judiciary is at the key point with the key role in preserving democracy by ensuring Rule of Law. And this is the legal way of safeguarding democracy. So the all-important Rule of the Law cannot be allowed to be a myth and misnomer. If so allowed, it is like people losing the soil beneath their feet leading to a catastrophic fall of the polity itself. Therefore the Judiciary...

All power centres / power wielders including Judiciary should keep in their minds the lesson that a

people who loved democracy and who showed the ingeniousness and the intelligence to opt democracy as their form of government can never be expected to be ignorant of, or indifferent to, what is happening around them in the name of governance. Such a people cannot be considered, looked upon or treated as ignorant, uninformed, blind, superstitious or as lacking in reason. Remember, they are a people who fought against an Empire on which once even the sun failed to set ever. They are matured enough to decide for themselves and they are governed by their reason, not by any phobia or mania. Beware; anyone who fails to acknowledge these superior qualities of the citizenry is actually disrespecting them in every sense of that word. And finally, their respect is to be attracted not by gimmicks or by mesmerising tricks, but by wholehearted action and glorious achievements. Don't venture to test their patience and tolerance too much, or any further. Lastly… democracy is our Queen and Princess; her servants attempting to woo her and to elope with her are no doubt, traitors.

■

CHAPTER - 2

Judiciary-
a panacea with no cure?
(Attempting to explore whys and remedies)

Judiciary-
a panacea with no cure?
(Attempting to explore whys and remedies)

Common sense, our system and the common man

Law is common sense, and justice also certainly is. However, regrettably and paradoxically, common sense is ghettoised from the realm of the process by which justice is attempted to be delivered by Courts. This situation is a casualty, for it throws away and distances common man, whose untrained intellect works out on common sense, from the stream of justice. If common man is the centre point of our legal system, introspection into this casualty with a sincere wish to restore common sense is indispensable for the system to sustain anymore. Common man needs to be made aware of how our whole system works. It is his right as citizen. He needs to be spoken to in a 'language' he is able to understand. Keeping him ignorant as such, the State cannot expect him behaving civically.

Restoring common sense in the realm of administration of justice takes common people nearer to the system, because they are able to see the common sense behind the justice of a situation while they are not able to understand scholarly terminology employed to express the law and justice of that situation. Common man governs himself by common sense and he is to be governed by the same sense, if at all he needs be governed anyway. Therefore, the system has to be reread and reconstructed so as to take common man along with the system and within its sweep and fold as well.

Judges & lawyers be wise and virtuous

Justice as well as common sense is safe only with the wise and the virtuous. Are our judges and lawyers men of virtues, values and wisdom? The fact remains that majority of our judges are only job hunters in the employment market from where they are elevated to the seats of justice. Selflessness or selfless service is not their traits or their motto, for which we cannot find fault with them alone. They are also, naturally, moneygrubbers just like any others in the social, economic and political set up that is prevalent. No wonder, corruption is just a spontaneous result.

Therefore, we need a mechanism to trace and pick wise and virtuous men from the society to be elevated to the seats of justice which is the last rescue centre for people living in a democratic setup. No doubt, the same or a similar mechanism must be employed to ensure that wise and virtuous men only are getting into the lawyer's profession. Judges and lawyers so screened will take care

of the common man and his 'sense', his sorrows and sufferings too. Properly manned, we will see even cows on pictures eat grass.

So, manning the system with proper men is the first and foremost prerequisite for the system to sustain, evolve and grow. Virtuousness and wisdom need to be the two essential traits that the proper men we search for manning our system should possess. Virtuousness signifies just moral excellence and beneficence. Wisdom involves, simply, the ability to use common sense and insight apart from possessing knowledge and experience to tap from. We have 'human' brains, but it appears we do lack very much in having 'humane' hearts. Both must occur and concur if we do want to change the hard situation we are in. That is why we need to choose wisdom guided by virtuousness as the means for our amelioration and prosperity.

Procedural generosity

A recall and refurbishment of the common sense underlying the procedural rules as expressed by great judges like V.R. Krishna Iyer are seemingly desirable. By mastering the skill to sense procedural rules with the aid of common sense we would achieve timely justice getting over the hurdle of delayed justice even without any concern for scissoring off any of such rules remaining in the statute book. Ironically, we have become "handmaids of procedure" that the substantive part of the law has become a petty stuff with us. We are too much religious and ritualistic when it comes to procedure. We

brood too much over procedural rules misguidedly. Though substantive justice is our concern, in practice it often becomes secondary and procedural justice usurps the primary position. Both lawyers and judges greatly contribute to this critical mishap.

Our procedural sense is so commendable that with some judges it is a fashion to introduce 'new' procedural rules especially when they take charge in a new station. When anybody tends to differ, the judge would respond saying "may be, but it is so in my Court". The rules will be piously followed by the Registry of the Court even after the judge leaves the station.

What else more, even the ministerial staff of our Courts realises the lacuna in the law and comes up with their own unwritten procedural supplements to contribute to our Corpus Juris. See, how safe is our legal system even with our Court staff! By the way, don't get surprised if you find it very difficult for a proceeding, though prepared by a legal expert, to get through the procedural checkpoint at the Registry after the "very serious" scrutiny to which the proceeding is subjected to by the 'procedure experts' positioned at the Registry. 'At least' do spell check before you venture to put your cause in the filing tray. See, adjudication emerges only next. This is, and this reflects, the general attitudinal standards and quality that is obtaining in the scenario of justice dispensation at the grass roots; and this seems to be the situation throughout. In substance, justice has lost the focus. Enough!

Why the system fails?

So long as the plight of the hungry and the downtrodden of our country continue to be their own woeful plight ever, we have no other go but to admit that we are a failure as a Nation. Our claims of success or achievements are bogus. Democracy is for all. It is not for some, nor does it mean many suffering for some or the other way around. Your prosperity ought to be the prosperity of your fellow beings also, if you are compassionate. So introducing some amount of compassion into our heart is the plainest and easiest way to bring prosperity to everybody. Not that we just need only to switch over to working exclusively on that line forthwith for bringing change, as humanising our hearts has, of course, been a real perennial riddle. One is able only to introduce the feeling of compassion into one's own mind, but it is very difficult to pass it into others minds. Nonetheless, it is not wise to cast away the effort on that line completely. Actually, compassionate men and women in the whole history of humanity have ever been working relentlessly on that area with hope that never faded away with them. Still there is hope if somebody is able to carry on the work in that direction. No doubt it will complement our effort on other lines for materialising prosperity. This only is the point that is attempted to be highlighted here on the significance of sowing the element of compassion in our minds.

Now, the humble attempt we make herein is to see the reasons for the failure of our system as a whole with particular emphasis on the reason for the failure of the Judicial/legal system of our Nation. In the process we

learn the all-important lesson that the reasons we come across also provide us with the insight that the remedy is very close to us, but only if we understand and accept. Prosperity of all is close by. Precisely spoken, our mindset only matters. And the same mindset itself of his own is the real enemy who is standing armed up straight against every human being.

Now we may attempt to see the mindsets that are working for and on behalf of the people at present as well as the mindset people do possess in turn. The process incidentally involves seeing the ideal mindset that the system expects people as well as their servants including judges need to possess. Who is unrighteous and guilty for all the problems we face in our country? Nobody is qualified to blame anybody exclusively is the naked truth. Everybody has contributed in their own way, some actively and some passively is the difference. Therefore, putting everything right is also the collective responsibility of all. It essentially needs to be so also in a democracy. And this is the hard, but sanguine, lesson we learn and this itself is the lesson we essentially need to learn as well. Let us all critically introspect....and be ready to mend ourselves, and thereby mend our system too. This only is the medicament open to us, and the same is enough to revolutionise our lives. With that in mind, inspiring every one of us to introspect is the humble, though not very simple, attempt that is purposed by the discussion contained herein. As to introspection, here it involves observing yourself or keeping an eye on yourself with a mind to repair and correct yourself. In short, an objective self-scrutiny just like you stand in front of a

mirror to clean up and prettify your face or to smarten up yourself altogether.

Judges people's paid servants

Judges are at the service of the people, they are really the servants of the people just like any other people wielding power under the system. Their powers, their privileges, honour and all the conveniences they enjoy at the expense of the people are meted out to them in order to enable them to serve the people better and better, needless to say not to satiate their own ego or egotism. Judges are just jobless mass if people do not need their service. Judges need to realise these important and basic facts concerning them before anything better could be done for fixing the Judiciary.

The system is definitely indebted to those great judges who stood above the vices of ego or egotism over the time; they are the sustainers of the system. But what about a judge who engages himself in targeting a lawyer who defaulted in using a word regularly employed as a word of politeness? What about a judge who slaps on the face of an errant taxi driver on the public road? Reflection on this area would reveal that many of those on the Bench are alarmingly incognisant of the esteemed and invaluable role the system expects they perform.

Power, dignity and equality

In democracy power is nothing but responsibility. More power signifies more responsibility and absolute power is responsibility absolute. What is the responsibility? It is nothing but the duty absolute to serve people

answerably. However, this fundamental aspect of power is conveniently ignored by power wielders of all ranks and they exercise power as their authority over people. Power does not and cannot mean high-handedness, or suppression, or oppression of any kind or of any colour in democracy. If exercise of power results in producing such harmful elements, it is because of the misuse or abuse of power by persons in authority. And this is the reason why sizable portion of our law is designed for checking misuse and abuse of power regardless of who exercise the power, or whatever may the power be. Actually, the significance of this sizable portion of the law is the first lesson that all power wielders need to learn before they are allowed to take charge. However, it is an irony that it is this sizable portion of the law is what is ignored and disobeyed openly and 'authoritatively' than any other area of law is ignored or disobeyed, that too without even a pinch of accountability.

Those in authority behave as if they believe they are above the law and that there is no requirement of any law to control or influence them. They don't believe power has any so-called inherent tendency to corrupt them! Therefore they think law is to be obeyed by all people except themselves. They don't like to be controlled by any law. They think they are above law. As noted above, all kinds of high-handedness, or suppression, or oppression are the result of this working irony. The root of corruption is also not elsewhere.

If power wielders hold themselves to be above law, they are actually destructing the very root of our strategy

anchored on the mechanism of Rule of Law and Constitutional setup. Thereby they are spoiling our hopes and dreams as people of a Nation founded on the Rule of Law mechanism of governance as envisaged by the Constitution. Therefore harnessing power wielders and bureaucracy is one of the biggest challenges our democracy faces. We have not been able to keep our persons in power and authority within the limits set by law for them. We are not fortunate enough to enjoy the fruits of proper exercise of power by our representatives or our public servants. Instead, we are unfortunate that we suffer much and we lose much as a result of misuse and abuse of power by them both. Our Judiciary is also never free from this intolerable blot.

There is nobody in India who does not deserve the dignity of an Indian citizen. That dignity is the basic as well as the ultimate dignity to which every Indian is entitled irrespective of his office or authority, howsoever high or low. This dignity is ultimately what the Constitution guarantees to every citizen of India. So it cannot be denied to anybody, even to the criminals or to the outlaws including traitors. No Indian should be treated in a way not befitting to, or in derogatory to that dignity. Any sort of criminality including sedition needs to be viewed only as a problem of socialisation and democratisation. Nobody is lowborn or ignoble. No Indian is more than an Indian for any reason. And for no reason any Indian is less than an Indian. Every Indian is worthy of being honoured. Every Indian is entitled to, and deserving, esteem and respect. Would any Indian disagree with these points on the basis of his office,

position or power, or on any other grounds of caste, creed, gender etc.? Nobody, but the state of affairs in our country remain the same without any change. Why? We need to think of. We need to remember that a Nation is not a setup to harass or kill its own people for any sake or in any manner. A Nation is a single family. The family collapses if it fails to ensure at least the basic human rights to its members.

Viewing things in the above context, the important point here now is, privileges or favours attached to any office do not attach the officer concerned with any special dignity superior to the general dignity of the citizens. Those privileges and favours are only the conveniences, rewards, incentives, honours, gratitude etc. conveyed and conferred by people on persons engaged in serving them. The purpose is to create a very good working ambience and spirit, as well as commitment.

Judges not overlords

The point is that every Indian's dignity is the same and equal in front of law. Therefore, a judge in a democratic polity should not misidentify himself with a feudal lord surrounded by people bowing and stooping in servitude in front of him. An immediate and thorough check out aiming at reforming and correcting those at fault in this aspect of the matter is the emergency of the hour. But, we often make headway in misaiming, and we do make it a point to miss the actual targets unerringly. The situation this way gets further deteriorated. This is a real irony that often happens in democracies when the system working under it becomes corrupted. Judges need to realise and

cherish the cardinal fact that they are Indian citizens, neither bigger nor smaller than Indian citizens. They need to realise this fact precisely and pristinely. Not only judges, every Indian needs to... without compromise.

Judge not Court

A judge should not identify himself with the Court. He should not think he is the Court, because he is not the Court is the basic fact. Addressing him is addressing the Court as an institution more or less like members of the Parliament address the Speaker of the Parliament. A judge is also bound to respect the Court in which he is the judge just like lawyers are bound to respect the Court in which they conduct their cases. Judges definitely need to be asked to learn to respect their Courts. A Court is a workplace for judges as well as for lawyers. Unilateral exhibition of respect is not going to help build tranquil and pleasant working atmosphere; rather it creates a tense or unpleasant situation. If respect becomes a subject of much botheration, justice would become a secondary subject. Preventing such a grave situation needs to be the most serious concern for the judges as well as for the lawyers because they, the duo, are the guardians of justice and the legal system.

Judge without Bar experience

Judiciary seems concerned predominately about the legal knowledge judges need to possess. Training that is given to judges is also known to be directed towards addressing that concern alone. Recruitment of judges, especially of the subordinate Judiciary, is also based on the same criteria. Nonetheless, it is just a matter of common sense

that legal knowledge alone won't make up a judge, and the fact is that it is very rarely that a repository of legal knowledge gets moulded as a judge in the true sense. Too much emphasis on the legal content of judges will only help them alienate themselves altogether from their fundamental duty of "judging facts" by depending upon law which is meant inter alia for being served as the main 'aid' for judges in their decision-making function. Information on provisions of statutes is not the content of jurisprudence which infuses life and spirit into the corpus juris of a legal system. Our jurisprudence does not believe in legalism that emphasise on the letter than on the spirit of law.

Therefore "I know law" is not the most prominent of the few fruitful attitudes that a judge needs to entertain in his mind while discharging his duties. It really takes a few numbers of adept and effective attributes to make up a judge. Judges need to search for and identify those attributes and need to actualise them as part of their being. In their interaction with law, what judges and lawyers need to possess is the ability to understand law and its nuances, certainly along with the ability to insightfully apply their understanding of law to the factual situations they handle. Whatever, Court is not an arena for a contest between judges and lawyers on their respective legal knowledge. Legal dialectic in Court is not showing off legal knowledge judges or lawyers possess. Law is only a means and never among any of our ends. Law is not something to be revered or worshipped. It is one to be exploited for reaching at our sublime objectives of truth and justice. Law is only a

measuring cup or the scale for the judges to weigh truth and justice.

'Facts' is the spirit, and law is the body. Justice is the offspring of the union between facts and law. Combining true facts with correct law to produce justice is the function of the judges. For performing this sublime or 'divine' function a judge has to search for the true facts and to understand the relevant law correctly.

Now, law is not unknown, and it is generally discernible without much effort. On the other hand, facts are unknown and not discernible easily always. So finding of facts is a delicate process that must be undertaken earnestly and piously by Courts of facts. However, obsessed with legal hangover, trial Courts often fail even to see the difference between questions of facts and questions of law. The sifting between the same even at the stage when that is more relevant often does not occur. Facts first, application of law arises only next. Otherwise, your expertise in law is immaterial. Judges need to keep in mind that law is only to govern factual situations. Law alone has no purpose to fulfil. Law is not intellectualism or a stand-alone pure science. If we don't have facts to decide upon, law is junk and redundant. Clearly, judging or adjudicating facts is the primary as well the ultimate duty and function of the judges. And, evaluating law 'purely' is not primarily in the domain of the judges.

These important aspects concerning justice delivery process were referred to keeping in mind the next point concerning the importance of experience a person need to have on the side of 'practice' of law before he becomes

a judge. The points above discussed bring home the point that a judge is not born at the drop of a hat. A true judge is evolved over time, through experience. Therefore it is a fact that a judge without any experience at the Bar is not fit to be a judge, whatever the position the judge occupies in the hierarchy. This fact is more particularly so when it comes to trial courts.

A Judge without Bar experience is only a liability detrimental to the system. Academicians may make themselves over as good bureaucrats but not befitting judges. We need to seriously deliberate and decide upon the standards, qualities and qualifications a person need to acquire before he could be appointed as a judge. Reviewing and fine-tuning the existing criteria is absolutely essential keeping in mind the points discussed above. If we do not show the wisdom to do this at the earliest, our dream of a vibrant and dynamic judiciary will never come true. Instead, we will have to remain satisfied with a namesake and broken-down judiciary forever. Our judges must be 'judges' and nothing short of it. We prefer to call them 'Justice' because we believe they are justice reincarnated. Our belief must be meaningful.

A professional degree in law with some formal apprenticeship and training would bring forth a judge is foolish an idea far away from reality as far as a country like India is concerned considering the nuances of the legal system it follows and the out-dated and not-modernised infrastructure facilities with which its Courts are operating. Consequences of the idea put into practice

so far seems to be disastrous. A study would reveal that. It's time that the Judiciary changes its view without losing any moment. It is serious. Parliament needs to debate the issue if Judiciary is anyway reluctant to rise to the occasion by changing its view.

Though our Courts are 'open' they are not open really. The incompetents and the corruptible thrive in the "open secrecy" of our Courts unknowingly and unnoticeably. Video recording of Court proceedings would be a massively useful remedy for the ailment of incompetency as well as for corruptibility. The hue and cry for the same remains unheard. No time is left for waiting without doing it. It will not only bring home to our judges what nuances judicial restraint and judicial wisdom involve, but also bring home to our lawyers what professionalism calls for and meant to be.

A little more on Bar experience. It is shocking. We have a judiciary which has failed in realising the indispensability of practical experience in a Court of law for a person 'learned in law' to become a judge. Realising justice as an ideal or a commitment and developing, at least, a minimum amount of sense of justice are indispensable for a person to become a judge. How do we think we will be able to inculcate these indispensable qualities in our judges if they don't have any courtroom experience before they become judges?

Your vehicle, public road and heavy traffic make up the essential facts. And your academy has certified that you have learnt rules of traffic along with a theoretical understanding of driving from the academy. No casualty

at your hands by the use of your vehicle is the element of justice that is involved. What will be the fate of the justice and of you yourself, if you are permitted to drive your vehicle without any practical training in driving? Your 'academism' may come for your rescue, but not before you could put it into practise.

Again, you should not ask a medical graduate to cut one's ailing heart open for repair and treatment simply because he has had to take some serious lessons in anatomy and physiology. We are fully forgetting "sense of justice" and its pivotal role in the decision-making process carried out by our Courts. Power of discernment is developed only by experience. Each and every one of our judges necessarily need to learn and be fully aware of what the system demands and expects from them and they must be able to conform to the demands and to live up to the expectations. Citizens' life, liberty and property are "handle-with-care-only" delicacies which require utmost care and skilfulness while handling. Judges and lawyers, including prosecutors, need to keep in their minds without failure that they are persons charged with the duty to handle those most delicate and most precious things in our country. They are to be more careful, more patient and more diligent than surgeons who cut open your hearts and brains for repairing them.

Appointments

Our Constitution which has firmly embraced the principles of separation of powers cannot be held to have envisaged vesting of unrestricted powers on any organ of government or on any person. Constitution allocated

State powers on the organs of government on the basis of the principles of separation of powers. Power allocation made by the Constitution, therefore, has to be reckoned as a basic feature of the Constitution. Self-appointment or self-designation predicates concentration of power and so it is fundamentally against the spirit of the principles of separation of powers as well as against the spirit of our Constitution and democracy. Hence, who must be our judges can never be the exclusive concern of the Judiciary alone, especially when that power centre is receiving severe criticism and disapproval. And the present placement system, from the trial Courts to the Constitutional Courts, needs overhauling essentially from the qualitative standpoint.

We should not hesitate to accept the fact that incompetency is as devastating as corruptibility is and that both these blots are 'galore' in our system. Both need to be equally addressed and eliminated.

Debates are all going on prolifically on the issue of appointments. It is indeed a very good signal as well. But the debates do not seem to address the core issue of ensuring quality of the appointed is the real problem. What is brainstormed on is how to put bridles on, or how to rein in, the appointed. Devising or inventing stronger shackles is essentially the exercise every time. It is not that the attempt in that direction is insignificant; rather it is undoubtedly significant. Anyhow, however stronger be the bridles and reins are, quality or incorruptibility is not a guarantee is the challenge that always remain unresolved. Therefore, how far the restraints would help

ensure quality and incorruptibility needs to be a very important point of enquiry. It will reveal to us that the primary riddle that needs to be brainstormed and resolved is regarding how quality and incorruptibility can be brought in and ensured by means over and above the usage of shackles, reins and bridles. Ignoring that vital aspect of the matter we cannot bring in any satisfactory change to the prevailing situation of corruptibility and incompetency.

Democracy cannot be an exercise ever ending up in casting, or experimenting with, some or other forms of nets or cages for taming or containing the power wielders. The restraints introduced must be the ones that enable us to absorb the wise and the virtuous into power and also the ones that galvanise the wise and the virtuous who are so absorbed into power. The restraints should never be the ones that give occasion to the arrogant, the incompetents and the corruptible to get into power and to continue in power unaffected. Our public election methodology is almost flawless. But it hasn't given us any guarantee at all that we elect only suitable ones or that we never elect any unsuitable ones as our representatives. We know what our experience is. We know how proficient our politicians are in manipulating the election process in such ways that it serves their own narrow interests alone.

Again, regarding the deliberations we have been referring to... equally important is the point that all the ongoing deliberations are directed exclusively towards appointments to the constitutional Courts alone. We need

to learn and admit the bare fact that the lion's share of the judicial powers is exercised not by our Apex Court or High Courts, but by the innumerable number of Courts working subordinate to the Apex Court and High Courts. They are the Courts at the root directly dealing with the justice-related predicaments of the common man. Actually they are the Courts charged with the fact-finding mission, which is the primary judicial function of the Courts in a legal system. If the Courts at the grass roots are not competent enough to perform that most crucial function properly and effectively, the superior wisdom, richer experience and wider powers of the Superior Courts are of little significance.

Therefore concentrating hugely on the Constitutional Courts without any attempt at all on revamping appointments to the rest of the Courts in the country and without any quality-ensuring programme aiming those Courts is not going to produce any substantial or wholesome change in the quality of the Judicial system. This is the most important issue that needs to be addressed while trying to fix a broken-down justice delivery system. Stamping an impression that our Judiciary represents our Apex Court and High Courts only would be extremely misguiding an approach. It appears that the approach involves huge trickery. Can we imagine that the task of tackling backlog is on the shoulders of Constitutional Courts? Their share in the task is, actually, negligible when it is compared to the share of it tasked on the shoulders of the subordinate Courts.

By the way, as to appointments to the subordinate Judiciary, the following point seems to be relevant. Public Service Commissions are Constitutional bodies meant to ensure independency, transparency and efficiency in the matter of appointments to public offices. Their relevance cannot be brushed off or their powers cannot be usurped or taken over by any other bodies. Except in the case of appointments for which alternative modes are prescribed by law, power of selecting qualified hands to all other appointments must remain within the domain of the Commissions themselves. That is the law. Nothing can be an excuse for violating law.

In Kerala, the recent exposure has proved how the Hon'ble High Court 'excels' the State Commission in the matter of appointments. It is now in the public eye what the Court has been doing in the name of appointments. Further, the Hon'ble Court has a stock of 'amazing hands' ever ready to take charge of Magistrates and Munsiffs whenever the stock of the selected hands runs out. No day would pass without judges is a guarantee for the Keralites! What else is required?

It seems to be that in the sound judgement of the Hon'ble Court, those ad hoc persons in its stock would transcend even lawyers with sufficient standing if they are placed on the Bench instead of placing lawyers there. It has become that every Tom, Dick, and Harry is a fit judge. Even a lawyer of 50 years standing also is made to state his case before these Toms, Dicks and Harrys, who are often drawn from some category of the ministerial staff. Everybody is blind not only to the repercussions

the practice would bring forth straightway on the system but also to the impact that the same would have on the working of the system as a whole in the long run. If a judge's function is only of the nature that it can be carried out successfully by these adhoc persons, why all the serious exercises in the guise of hatching Munsiffs and Magistrates for occupying the same seats?

Court culture

Back to the essentiality of judges' Bar experience. Judges and lawyers work together for the end result of delivery of justice. They must be able to interact and feedback mutually without communication lapse. A novice without any courtroom experience fails in these regards and, no doubt, this would definitely harm the system. Something called Court culture is gained through courtroom experience only. There is no substitute for courtroom experience.

A Court scene. A Judicial Magistrate, fresher as a judicial officer who took charge only two or 3 weeks back, is presiding the proceedings. A defence lawyer craves for a day's adjournment of his case wherein a witness for prosecution present for giving evidence. Lawyer's main grounds: (1) copies of certain crucial documents on which prosecution relies were given to him by the prosecutor only when the case was called on that day, though direction had been given on the previous posting date; and so, without getting reasonable time for examining the documents, it is not safe to venture to cross-examine the witness on the day; (2) as the offences being serious in nature, accused has engaged a senior lawyer from

another station along with him and the case bundle is with the senior, and though the senior was expected to come on that day, he has not; and (3) that the witness is a very material witness. The lawyer also expressed he is willing to compensate the witness by paying cost fixed by the Court. Anyhow, the lawyer fails in the attempt.

The witness was examined disallowing the entreaty can never be any grievance because Court has every power to adopt that course for judicious reasons. However, what does it imply if the order on the day's proceedings runs like "Counsel for accused present Adv.....is not ready to cross-examine the witness. As there is no cross-examination evidence is complete". And the Court posts the case for questioning the accused under S. 313 of the Criminal Procedure Code. On the one hand, the order swallows up the effort put in by the lawyer for securing an adjournment and on the other hand the order judges that the lawyer has violated the law, rules and ethics relating to his profession by withholding himself from discharging his professional obligation to cross-examine the prosecution witness unjustifiably. What really transpired in the Court is covered up. Does the scene not arouse some very serious concerns?

These things are also relevant in the context; "All those things are your internal affairs" was the Judge's comment on the lawyer's submission regarding engagement of senior lawyer; the Judge also named some of the lawyers in the same Bar who could have been engaged instead of the so-called senior; nearly a score of witnesses were remaining to be examined in the case when the Officer

enthusiastically posted the case for questioning the accused under S. 313 of the Code.

What happens to fair trial principles with our judges when the principles are practically applied in Courts? Are those most precious principles safe in their hands? What judges think of the role and position lawyers fill in the adjudicatory process? How judges think they should interact with lawyers or deal with the lawyers, or regard the lawyers? How much is the awareness of the judges regarding the practical and personal difficulties lawyers as normal human beings may have to face in connection with the discharge of their professional obligations along with handling their unavoidable personal preoccupations unfailingly? How far judges are proficient in handling all these factors without losing practicality and pragmatism that those factors demand in varying Court situations? And what we are doing for ensuring that all these challenging factors are carried off by our judges without causing any serious damage to the system and its functioning? Lastly, do we focus sufficiently on the above important factors also when we plan and impart training to our judges? Don't we need to focus sufficiently on the running of those factors in the actual working of our Courts?

Justice dispensing not officialism

Judges and lawyers must be capable of conceiving the unsimilarity between a bureaucratic office and a Court of justice. They shall not misconceive their noble service simply just as a job or occupation. Imagine, how jumbled and chaotic would become the Courtrooms by and by if

judges and lawyers fail in realising these vital aspects involved in the working of the Courts? Even so, no troubles so far as lawyers remain incurably servile as they are now as a class, of course, steadfast ones apart, doing. No troubles, so far as judges do not have the enthusiasm to come across any bold ones who are standing out strongly and distinctly in front of them, of course, dignified and composed judges apart.

Lawyers' role equal to that of judges

Why judges only are blamed and criticised for their pronouncements while lawyers also are equally, if not coequally, responsible in forming the opinion of the judges?

The function of the judge apparently is to form opinion on the basis of what was sounded at the Bar in compliance with the rule of audi alteram partem. Judge's third view, if any, also must pass through the checkpoint of adjudication in the open court complying with the same rule. Though this is to be the essential routine for making adjudication process complete and meaningful, it happens only rarely. The third view finds its first, and also the last, expression in the judgment only, thereby violating the fundamental rule by the judge himself.

Judges being able to see even what counsels of the contesting parties fail to see is a good advantage and so an appreciatory trait befitting judges. However, their 'discoveries' cannot be discoveries that are to be kept in secrecy for being put into service by them exclusively for the purpose of articulating a 'surprising' judgement

that takes the counsels as well as the parties by surprise making them depressed and aggrieved. The secrecies this way lead to miscarriage of justice at the hands of judges themselves because they deny the parties the opportunity to explain their position as to the discoveries of the judges. An undebated third view is not the result of what is called adjudication. It is extrajudicial and it cannot form the basis of a legal judgment thus.

Justice is our end and justice itself is our means also for attaining justice, the ends. We call the ends as substantive justice and the means procedural justice. Viewed in this sense, substantive justice is our aim and procedural justice is only to ensure fairness in administering substantive justice. Therefore procedural rules should not work out as a hindrance in administering substantive justice. This is the clear-cut and the only concern running behind the concept of doing "substantial justice" which implies administering justice according to the substance of the law and not necessarily according to its form. Whatsoever, it is clear that the concept of doing substantial justice does not imply that judges are free to decide how they 'like' to decide. It does not license them to cast aside either the form of the law or the procedural rules completely in their 'enthusiasm' to do substantial justice, because substantial justice attained at without fairness or due process is not justice at all.

Sharing an insightful incident before elaborating further on the above point seems to be suitable here. Suit claiming right of way on the basis of grant allegedly derived as per a partition deed executed during the first

fourth of the last century. Plaint was amended twice in order to make the claim specific. Commissioner was asked to identify the way as per the partition deed alone. Anyhow, multiple reports by the Commissioner were of no help to plaintiff. Commissioner was thoroughly cross-examined to prove the reports undependable. Plaintiff didn't mount the box without any explanation and deputed Plaintiff's brother for the purpose. Ultimately, the suit was decreed relying on a sale deed executed in the first decade of the second quarter of the last century. The deed was pressed into service firstly on the date of trial only. Since no spot data pertaining to the properties covered by the sale deed is available on the records, the process of the Court is likely to be proved inadequate in executing its decree. Tail piece; the inclination to do justice substantially has no bounds.

Coming back, how far our judges are able to strike the right balance between the 'form' and the 'substance' in formulating their judgments is a concern that judges need to be anxious about much. Often they fail in the attempt seems to be the real state of things. Illustratively; construing pleadings so as to serve the purpose of doing substantial justice is well within judges' obligation and domain as well; however, if in the guise of exercising that obligation, judges freely fail to 'find' anything wrong in going outside and far beyond the pleadings, it's apparent that they are throwing the interest of substantive and procedural justice out of balance instead of striking the balance between the two.

Judges, in no circumstances, can freely drive any case away from the essential tracks, fields and parameters that are evolved over time and taken over by the system for the guidance, management and control of the adjudicatory operations needed to be undertaken by the system in our democratic polity. Judges cannot, in the pretext of doing justice 'perfectly', carry away any case into their own fanciful free lands and fields that are away from all these trammels and bounds. Subjectivity may feel not only attractive but also as perfect and handy to a judge who is engaged in the process of decision-making, but the same is actually repulsive and imperfect from the point of view of the interests of justice and of the fate of the litigants.

In democracy judicial determination fundamentally is nothing but a process of collective problem solving by employing the powerful tool of critical thinking. This is what judges as well as lawyers must keep in their mind basically when they engage in their task of judicial determination of disputes. Consequently, judgements are not meant to be extempore deliveries of justice by judges. We don't need judges of that ilk in our system. It's for the lawyers to exposit the factual propositions on which their parties rely for the reliefs they seek. And it is for the lawyers themselves to exposit the legal propositions to be applied on proved factual propositions before the Court. Along with other materials on record, such expositions of facts and law carrying the reasoning, logic and original line of thinking of lawyers constitute the basic stuff for the judges to weigh, evaluate and form their judgement. Why they accept or reject one proposition against the other is the effectual reasoning that judges

are supposed to supply in the judgement in the first place. If that basic feature is nonexistent in a judicial pronouncement, it is not worthy to be called by that name. Certainly, for ascertaining whether a judge had complied with the mandatory rule of audi alteram partem also there is no other way except by resorting to evaluate his judgements.

A judge is not the original fountain of justice in our democracy. We do not want free hand delivery of justice by our judges. They need only to do justice according to law and legal procedure that are made or framed up by people. "I am to decide" or "I will decide" attitude is completely unfitting to a judge in a democracy. A Judge in democracy is not supposed to act like Solomon, the King of Israel. We don't want 'palm tree justice' from our judges how sublime such justice is. Our judges are assigned only to form opinions elucidating their reasons for their opinions. They can never take for granted that the engagement of their 'conscience' and the relevance of their power of discretion in the adjudicatory process are without any shackles. Actually the scope of the conscience and of the power of discretion is strictly tied up within well defined bounds. They have no power to 'decide' on their own. That is why their pronouncement is called 'judgements'. And, it is for the system to treat the judgements as 'decisions' as its obligation. Judges need to remember these: In democracy, what is just and justice for the people is ultimately the decision of the people. What is fairness is also people's choice. Finally, law is people's tool for ensuring and securing for themselves

what they entertain as just, justice and fairness. All the values and valuables you deal with belong to the people.

Still, subjectivity rules the realm of our decision-making process just like it is so in every other area of our political life. It is the most unfortunate fact that very often personal or subjective conviction of judges work as a silent killer of justice in many cases. The risk involved in subjective convictions of the judges is that such convictions instantly introduce prejudice and prejudgment in the minds of judges, and then, from that moment onwards adjudication turns just a mockery or formality. Their such conviction may either be moral i.e. based on the personal notion of what the judge personally hold to be right or wrong, or be one based on any personal impression that sprout in judges' minds on the first blush of the outline of factual inputs in the case. Naturally, in both the instances judges won't be able to pass a judgement in the case without either throwing in or pulling out some or other facts into or from the original factual matrix of the case. And the adjudicatory process in this way is openly sabotaged by, and justice suffers miscarriage at the instance of, the judges themselves. If our judges themselves commit these abuses freely, why do we need judges?

Judges need to learn to set their 'personal' opinions aside while discharging their duty of forming legal judgement in accordance with law which is applicable to the facts that are revealed objectively before them. If your subjectivity is anyway gets reflected in your judgement, you are not fit to be a judge in a democratic Court. You

cannot impose your personal opinion on the people or you cannot govern the affairs of the people by your personal opinions.

There are judges who think they need to go far ahead of law and that they need to travel beyond the contours of law if they need to 'manage', or get by, their work 'successfully'. Certainly, these courses are illegal for the judges to adopt. Despite this illegality, they freely hold the very same thoughts as their defence for their intrusions and overstepping. Their claim is that they are adopting pragmatism in their work for fetching better results. It is as if law is lacking in practicality and that judges are benevolently introducing some to it. Enthusiasm to be more loyal than the king or to be more Catholic than the Pope is mistrustful and unwanted.

Often, it is only when copy of judgement in a case is obtained that a lawyer is able to find out that what was weighed with the judge in forming the judgement was the personal conviction of the judge himself of some or other points lingered in his mind in relation to the case and not with any points debated in the Courtroom. The above approach in forming a judgement may be fitting to a rustic mediating on a scuffle, but not to a judge appointed to adjudicate on a legal dispute in accordance with law and legal procedure. Judges need to learn the essential difference between them and the rustic mediators without failing. Lawyers necessarily deserve blame for the excesses of judges. Often judges are constrained to tread on ways known only to them, because often lawyers present themselves before the judges to be

untrustworthy and undependable ones as officers of the Court. Judges and lawyers alike need to take pains to see that the right of audience is not violated in any manner. That right is the meat and potatoes of the very process of adjudication. No judgement pronounced in violation of that right can be treated as a legal judgement at all.

Now, having adverted to some traces of violation of the rule relating to right of audience, we may conclude that if a judgment reflects the personal view of the judge independent of what was submitted on behalf of the adversary parties, it actually amounts to violation of the right of audience which in turn is violation of the principles of fundamental justice and judicial procedure.

The position being so, if ban on procession in public places was found legally sustainable on the basis of what was submitted in the Bar for and against it, what is the justification for raising voice only against the judge concerned? The other side is; if the ban establishes only the personal position of the judge on the litigating issue, the judge deserves to be reprobated and even condemned for reasons many and apparent. He is transmuting himself into the lay. At the same time, the distressing situation where a judge is pelted with insults on the roadsides for his judicially and judiciously made judgment must be deprecated tooth and nail and be curbed forever because we need to fence in our judges, again because we need to respect and uphold the dignity of our judges. Even having some fascination for them also is not completely out of place in democracy.

Judges, lawyers and people at large becoming sufficiently conscious and convinced of, and their accepting and acknowledging of, the 'fatal' role lawyers play in the decision-making process would be a giant leap forward towards limiting such shouts and pelting of insults against judges because the anomalous situation stated above to a greater extent is the result of ignorance of the public regarding the part lawyers perform in the adjudicatory process.

The fact is that lawyers are equally responsible along with judges for erroneous or unpopular judgements. If judges are liable to be censured for such inauspicious outcomes of adjudication process, then why not the lawyers are also? People have the right to subject lawyers also to review. It needs definitely to be so also in democracy. The practice of blaming judges only for ignominious outcome of adjudication is undemocratic and completely inappropriate in the context of our democracy. In democracy no judgement is any 'invention' or 'creation' of any judge or judges. Nor a legal judgement is any intellectual property of its maker. Therefore, neither applauding nor booing the maker alone of the judgement would be an appropriate approach, though doing so is our routine. The routine we have thus erroneously adopted positions judges and the Judiciary in a wrong place in the setting of our system, and their identity is thereby mistaken and misconceived by the people. Hence it is a must that our approach and modus operandi in this regard needs to change appropriately.

A government cannot freely criticise judges for their pronouncements in cases involving public interest wherein government has been party before the Government could ensure to itself that it finds no reason for criticising its lawyers on account of their failure to present Government's case adequately before the judges. Failure of the lawyers in presenting their clients' case before the Courts cannot be made a reason for criticising the authors of the judgements. At the same time Judges are liable to be severely criticised if they articulate their pronouncements ignoring or sidelining the views plainly presented by the lawyers before them. Actually, performing judicial function by judges in this fashion is nothing but judicial 'misbehaviour'. People in our democracy have no remedy to correct this misbehaviour otherwise than by being rebellious. That must be prevented from happening for saving our democracy.

Therefore, our judges cannot go wrong in their findings, especially in the final findings by the last judge or Court in the hierarchy. The whole system must be fine-tuned so as to ensure that our judges do not go wrong in their pronouncements as well as to ensure that our judges do not 'misbehave'. Judges need to understand that their role in the making and maintenance of the Nation is crucial, vital and pivotal. We don't want our judges to deliver sermons or preaching, though we have great regard for their wisdom, ingenuity and skilfulness. Therefore what we essentially need to do now is to do whatever that is needed for enabling our judges to deliver sound, legal and rightful judgements only.

Voyage of discovery

Incidentally, judges cannot remain as just umpires or passive onlookers in the process of adjudication. Judicial view that judges need to actively participate in the process of adjudication is sound. Anyhow, judges who engage themselves in the "dynamic disinterested participation in the voyage of discovery of truth" can never do so by neglecting the basic principles which go to the roots of justice dispensation is the certain limit for their voyage. Therefore, they need to be careful is the point. The words "disinterestedness" and "dynamic" serve as the beacon light for them in the expedition. They cannot misconceive adjudication to be a judge-centred process when they are asked to participate actively in the process. No point discussed anywhere in the book is purported to be against the principle of active participation of the judges in the whole adjudicatory process. They need to participate within the limits. Such participation greatly adds to the dynamism in the working of the Court system besides adding greatly to the quality of the outcome.

Lawyers not extra-judiciary

Somehow judiciary has become the other word for judges, producing an impression in the minds of the judges, and lawyers too, that lawyers are outside the judiciary. That impression is percolated into the public also. Therefore the public alone cannot be blamed for their shouts against judges. Let the lawyers also shoulder the responsibility along with the judges for unpopular judicial pronouncements. As stated above, let the lawyers be more responsible for that reason. Definitely, number of

contempt proceedings will be reduced this way. If many of the contempt proceedings are conceived and investigated into in the background of what is discussed here, one will be surprised to observe that by the proceedings the perpetrated were being prosecuted by the perpetrators.

The integral duo

Judges and lawyers are the two limbs of one entity, the judiciary. The entity cannot endure with any one of the two. Who-is-superior-debate would be mean and inapposite. It is of no use for practical purposes. A Judge's utterance "Court will decide" unwraps his fallacious impression he is the Court, and the utterance also exposes his unwillingness to acknowledge lawyers to be along with him as the integral part of that institution as he is. The same utterance by lawyers reveals their folly that they have not been able to 'know' themselves to be along with judges, and their utterance also reveals they are inclined to identify the judge alone to be Court. Both the attitudes need to be changed at once. The flaw is that they are not able to know that they are equal. A lawyer makes the above utterance often as a device to gratify the mind of an egotistic judge is a matter that needs to be incidentally stated here, especially for the notice of the judges.

Whatever, lawyers should have their stake and voice in any matter concerning the justice delivery mechanism in the country. Good-for-the-country only must be the aim and motto with the law people at least. Both judges and lawyers are paid by the people. One is paid by the people directly and the other paid from the exchequer does not

make any significant difference when it comes to duties and obligation both of them owe to the people.

Hearing, the First Principle

Sparing a moment here for making note of a conspicuous incidence where judges fail to acknowledge or even discard the position lawyers occupy in the business of the Court would be relevant. It has become the order of the day with many judges that they seem to entertain a belief that hearing lawyers is one thing, only a matter of mere courtroom formality, and making decision yet another different and exclusive exercise within their own personal domain. They make a random pick from, or even completely eschew, the points canvassed by the lawyers. By doing this they are actually refusing even the appellate judges the opportunity to revisit the case 'in full' and thereby precluding the appellate judges from exercising their legitimate jurisdiction to dispense justice to the parties by correcting the lesser experienced. Adopting this practice, especially by trial judges, is comparable only to the killing of a child in the womb, the child being truth and justice. But one thing, this becomes an anxiety for us only if truth and justice are so precious and dear to us. Judges need to do one essential thing; introspect and propel themselves through the secure and safe path ingeniously trodden for them by the luminaries, the masters in the field.

As discussed, Audi alteram partem rule, the mother rule, is often violated in letter and more often violated in spirit in our judicial process. Judges must be sensitised regarding this serious flaw. Adjudication must be

adjudication and nothing short of it. If a judge is unfit to adjudge a dispute in the full sense of the word he is unfit to continue in the judge's composed seat. By the way, many junior lawyers entertain that some judges show reluctance to pay attention to what they submit whenever any 'big' lawyer is appearing on the opposite side. This blemish on the part of the judges is just unfortunate and condemnable. It's none of judges' business to pay attention to who appears. They need not 'weigh' the lawyers. They need to weigh what has been exposited or exposed before them. Instances are many where junior lawyers lose their case for the only reason that their opponent is a senior lawyer. This must be a point of concern with the seniors also.

Adjudication, the inviolable right

Adjudication is in no sense a matter within the personal discretion or delicacy of the judges. It is not something idiosyncratic to be departed from, varied or altered depending on the idiosyncrasies of the judges. It is neither at all a matter of benevolence or of mercy of anybody. It is the inviolable basic right of the citizens. It is at the root of all other rights. If adjudicating process happens to be ineffectual in any sense, it will make all other rights otiose. ADR, Target system, 'speedy justice', disposal drive etc. have already contributed greatly in making adjudication itself tenuous and otiose. We don't realise this state of affairs to be perilous for the reason that we have schemed to disremember the same for extraneous reasons, and this disremembering would ultimately result in the desolation of the system itself.

An anecdote would be germane at this point: "He (Plaintiff) is not interested for the 'disposal' of the suit. Hence suit is dismissed for default". (Parentheses and quotation marks supplied by the author). This is an order, which in no sense a judicial order, passed by a judge in the presence of an octogenarian plaintiff and his counsel. Plaintiff failed to take Commissioner for local inspection to the suit properties on two occasions; this is the background in which the order was passed. Health reasons of the plaintiff as explained by the counsel, or plaintiff's prompt willingness to take the Commissioner to the spot anytime fixed by the Commissioner thereafter were not enough reasons for the judge to spare the cause of the plaintiff. The old man had to seek the help of the Hon'ble High Court for saving his case.

Adversarial v. Inquisitorial

The adversarial system is more in tune with democratic principles whereas the inquisitorial system, which makes adjudication more a judge-centred process, works more or less against the spirit of democracy which in turn always views concentration of power as a bad signal and risky. The judicial view that conveys the inclination of our judges to switch over to the inquisitorial system seems apparently to be not one that is suitable to our situation as a democracy.

It seems to be instinctive for man that he finds some pleasure in subduing his fellow beings and making them subordinate to him or dependent on him. Perhaps, history of mankind is the history of man's tussle with this power instinct. Except for the wise, virtuous and the composed,

power, very unfortunately, presenting to be intoxicating. This intoxication is the major factor that makes any person invested with power blind to the realities. Due to their blindness they are incapable of perceiving the harmful consequences of their actions or conduct. Their actions or conduct are affected by their intoxication stimulated by power. They think that their power is for their own pleasure and indulging. Just the word 'sir' or 'madam' is enough to lift up even the last grade servants if you address them by using that word. Therefore, for cogent and serious reasons we cannot encourage anybody in their craziness for intoxication. Rather we have to be diligently vigilant against power addicts. We cannot permit any addicts to manage our affairs. Addicts may create their own world and indulge in whatever they like to be addicted to. Don't disturb the people. People need only persons who find happiness and satisfaction in serving them. Such persons are happy and satisfied in serving people because they find meaning in serving people.

Democracy is not a matter of choice. It must pervade over, penetrate into, work on, and operate at, every sector and facet of our political as well as social life. There is no question of dispensing with the working of democracy or its principles from the working of any of our political or social institutions. If at all any, Judiciary can never be, because Judiciary itself is the guardian, preserver and sustainer of our democracy. Judiciary must serve as a model for democracy at work. Coming back to the inquisitorial system, it demands judges of a still higher order, capacity, competency, integrity, incorruptibility

etc. than those that the adversarial system demands. Let us dream we may have such order of judges by the time the inquisitorial-like system falls, if at all that happens, on us on a fine morning.

Master Judges

It is also relevant to note here that though our system is adversarial as of now, with many judges adjudication is already a judge-centred process. It seems they maintain a disposition that they are more matured, full-blown, more knowledgeable and versed than lawyers and that they are able to decide even without assistance of lawyers. It will be interesting what would be the fate of audi alteram partem principle if its application is left to the discretion of such judges. Lawyers definitely deserve blame for overuse or overexploitation of the principle. They must desist themselves from the same. They need to be aware of the travails as well as of the dispositions of the judges as judges and as human beings.

By the way, many judges think that being decorous in Court is sitting in Court keeping their facial muscles tight, lips fastened and without exhibiting any hospitable dispositions. They won't murmur a word, their lips won't drop a smile, straining to bottle up pleasing mannerism or appearance, no humour, no pleasurableness. They think that all these feigning would conjure up a Court. They behave as if they have mistaken democratic Courts of justice for a King and his 'court'. They forget that as far as a democracy is concerned a Court is practically a workplace for themselves and for the lawyers.

How these judges count or regard their colleagues, the guys sitting facing them in Court enrobed similarly as them? How judges reckon the litigant public watching them in Court? Are they trying out any techniques in applied psychology 'intelligently' on the people with the earnest wish to procure the maximum output they are able to procure by their work in Court or by working as part of the Court system as a whole? Judges need to keep in their minds that they are working in a democracy; people cannot be looked down on or manipulated by any means. They are no more 'subjects' of any king or monarch. They are not guinea pigs also. No makeup, fakery or bluffing is necessary for catching people's attention if you are able to present yourself majestically before the people. Seating arrangement in Court is only for ensuring audibility and for visual convenience. Robes being colonial as well as a relic need to be altered in tune with the changed times. People are innocent and rustic. Judges need to be realistic in their approach and attitude towards their role and function in our democracy. Democracy is a seeking to see people alike and as equals. It is an earnest and resolute effort to make people equals, while leaving them to remain to be not alike. Dignity of people cannot be compromised anyway because a Nation is its people.

Impartiality

Being impartial only signifies neutrality or unprejudicedness. A man obligated to be impartial need not cease to be a man in order to maintain his impartiality or neutrality. He need not become machinelike for the purpose. Further, being impartial cannot be held to mean absolute non-involvement or absolute detachment.

A doctor who gets himself emotionally involved in the pains and sufferings of his patients fails in holding himself to be a good doctor because an emotionally involved doctor is putting himself in a position which would prevent him from diagnosing correctly and prescribing properly. Similarly, a doctor who disengages himself completely from the pains and sufferings of the patients also cannot be a good doctor, because his total disengagement prevents him from 'getting at' the case and thereby makes him incapable of diagnosing the ailment and of planning proper treatment. So, the extremes of total involvement and complete non-involvement are undesirable. Judges have to tune themselves up in order to position themselves at a balancing point between the extremes if they are desirous of doing justice qualitatively and substantively. They need to be dispassionately passionate in their pursuit of doing justice. They need to be able to feel the predicaments of the litigants, but without being affected anyway by the emotions involved therein in discharging their duties. This is what is called active participation by judges in the adjudicatory process.

Remaining dispassionate completely seems to be not a very easy affair for a caring-for-client lawyer, because he may not be able to set himself in a stance that would keep himself always too far from the plights of his clients, though he cannot in any way whatsoever justify identifying himself with his clients. The fact is that he is closer to the facts that bring predicaments to his clients.

As for a judge, his chore is over by the pronouncement of his decision. But the lawyers' chores do not end there,

especially of the lawyer of the party who lost the case. Judges need to remember that generally the parties know the truth, their lawyers also, normally. Therefore, judges need to make every endeavour to see to it that the winner doesn't happen to celebrate a win that he doesn't actually deserve. Let it happen that the party who actually deserves winning celebrates the win and be proud of our judicial system for its superiority. At any rate, the lawyer of the defeated party is in a dilemma if that party is suffering a loss that it doesn't actually deserve. The judge needs to be very careful to give convincing reasons for the loss. If the judgement contains no such reasons, how the lawyer will be able to save the face of the Court from his client or safeguard the dignity of the Court in that situation in front of his client? Win or loss must be sound and real. Judges should have a real fascination for truth. For Indians truth is the soul.

Cases flowed, justice flawed

What for else is the new attempt to introduce management principles into 'Court business' of justice dispensation, if it is not for facilitating the process of conversion of litigation into a judge-centred process? The proclaimed objective of the scheme itself is increased Court supervision and control over litigation by applying managerial methods in handling Court cases. More clearly, "there should be a fundamental transfer in the responsibility for the management of civil litigation from litigants and their legal advisors to the Courts". This is the declared policy behind making and implementing the relevant rules.

Twofold assumption works behind this invention. (1) The slow pace in the progress of litigation is the consequence of the volition left to the lawyers/litigants in the matter of conducting cases, and (2) if 'management' of cases is exclusively left to the domain of Courts, timely justice is easily achievable.

History speaks; Judges have never been better than lawyers and lawyers never been better than judges. Both have been guilty of under-working and procrastination, definitely not lawyers alone. So, history teaches us that there is no meaning in assuming that judges would get ready to speed themselves up in their work on a fine morning, except under threats like fixing target etc. as now experimented on their job security. The threats may bump up quantity of work, but the same not without jeopardising quality.

One wheel of a two-wheeler is in good condition, but the other is punctured. No use. Both front and rear wheels must be good to make the vehicle ridable. Judges and lawyers are the two wheels and the Court system is the two-wheeler. Augmenting and igniting judges only is of no use. It, rather, would result in making justice delivery process a mere courtroom formality at the instance of authoritarian judges.

Now, what we learn from the discussion is that the above noted two assumptions are false. If the assumptions are false, how can the conclusion be true? So the solution based on erroneous conclusion is also unworkable. Is there any scheme for igniting our lawyers

and judges together and making them committed to their mission together? If not any, the present exercise at case management would only result in the further breakdown of the system injuring even the basic principles on which it works now.

Ours is not a Nation lacking in indigenous ideas, insights, thoughts, answers, solutions etc. to guide us and to lead us in any sphere of our life. It has been our proud as a Nation that foreigners often had to draw from our ideas, answers etc. Then, it's inconceivable why we are crazy to import thoughts and solutions from abroad for solving problems we face in our country, that too often disregarding the nuances and peculiarities of our situation and without assessing the pros and cons of the imported solutions on us. Often the solutions are mismatching and produce undesirable results. Already there are some such timeserving imported solutions. The Case Flow Management System is yet another importation of that sort.

What is the amount of control lawyers presently have in the matter of management of their cases in Courts and how much of the same is to be taken off from them and how much of it is to be permitted to remain with them is a point that demands a debate in view of the new experiment with the Case Flow Management System.

It seems that at present lawyers do not have any such controversial amount of control in the management of cases. Is there anything to be achieved by taking away the very limited freedom now open to the lawyers and to

the clients in the matter of discriminating as to what to do, when to do etc. in the conduct of litigations? This also has to be investigated. Anyhow, undue control of judges over cases may increase the tendency of judges being arbitrary resulting in the deprivation of the principle of objectivity which is fundamental to the adjudicatory process.

Delay factor- judges & lawyers add to equally

Delay factor and target system device needs immediate revisit and overhauling. Judges and lawyers have been procrastinators and contributors for delayed justice- prorogue asked and prorogue granted, the grantor and the grantee confederates in the same sin. Indolence and laziness have no cure. Diligence and activeness cannot be inculcated by changing law. A minimum amount of dedication and commitment to the cause for which one is appointed and paid is only a legitimate expectation. In a way that minimum is enough to do magic. Those who are not at least up to that expectation must be searched for and expelled instead of being asked to do more, lest the very cause of justice itself should be at peril. Procrastination is a common stigma that needs urgent attention, but hurrying up is never the cure. Hurrying up is not dispensing justice. Well said, it is "burying" justice.

Target- disposal for fear

Is it our discovery that our judges won't work if they are not compelled to work by fixing target for them? If it is true, then it is a shame on the entire Judiciary. Whatever, quality is definitely at stake. Quality sacrificed for

quantity has no justification at all, especially for quantity achieved for fear, of job security. We see judges haste, even skipping recording evidence and listening addresses. We also see judges pathetic- prompting, wooing and even threatening opening their bull's eye for settlement in the open court. We should not fail to learn that common man is also learning something from these experiences, something which may make him revolting. Going for quantity staking quality is fascism or totalitarianism where welfare or wellbeing of people is of no concern. Trickery won't fetch democracy or welfare to the people.

Is it not imprudence and recklessness of the highest degree to compel even a fresh appointee judge to achieve target from the day first? Still more, what is the fate of the litigants if that fresh hand is seeing the Courtroom for the first time in his life as happens in cases where the appointees are without any experience at the Bar? It is just one instance indicative of our disregard for justice and sense of justice as well as of our disregard for the causes of the litigants.

The pressure the target system mounts on the judges make them red-faced. No day passes without judges uttering 'target' at least once in the open Court. Even a conscientious judge seems finding himself helpless in 'doing justice' in his hastiness for achieving target. Overly enthusiastic ones try to achieve more than the target to become 'good boys'. Dismissing for default or passing ex-parte judgements has become the royal shortcuts to achieve target. This is the scenario that has been

produced. It's well said, "Law wins, justice failed". There is no reason for adding up cases disposed of otherwise than on merits in the account of target achieved by judges. When a government sets target for 'reducing' crime rates for propaganda purpose, police achieves the target not by augmenting their performance but by omitting registering of FIRs even though reports or complaints on commission of crimes continue to pour in. Crime scenario gets worsened as a result. What would be the strategies our judges may adopt for achieving their target? How targeting and speedy disposal mechanisms are going to affect the quality in the administration of justice?

Even when a lawyer submits he is ready to proceed with the trial of a case of the year 2014, the judge is no way reluctant to say that he is bound by the target to dispose of cases up to 2012 only. Litigant in 2014 case is asked to wait 1 or to 2 or more years for getting justice. Is this speedy disposal or tackling backlog? How the backlog figure will get reduced if judges are allowed to skip cases that are filed currently? Cases filed newly also are added to the backlog figure by and by will be the outcome. Then, is not target system a cat-and-mouse-game only?

Some judges set out for recording oral evidence even without going through pleadings. What quality of justice then they would be able to deliver? What is "burden of proof" for these judges? Judges cannot be blamed, because the target-ghost is there standing before them with its mouth opened ready to swallow them. Whether judges have been able to deliver justice to the parties is

not a consideration at all. Whether judges have somehow been able to bring out a judgement or not is the only matter that the system takes account of. Any infringement of fair trial principles or procedure is justifiable if target is the target.

Whether cases are ripe for full-fledged adjudication, whether lawyers/litigants are prepared for the same etc. are no more any matters of concern. There are no light cases or heavy ones. Equal treatment for all! As noted above, some judges, in their hastiness, are even 'prepared' to sit for final adjudication, the process which involves trial and hearing arguments, even without going through the pleadings and thereby remaining completely in dark about the facts they are supposed to adjudicate upon. Even then you will get a judgement in your case, speedy justice. Judges need be asked only to do timely justice and not to achieve target hastily and at any rate. Everything adjudicatory has become just mockery by the introduction of the target system. We are hurrying up our judges and the entire adjudicatory system.

Having heard on a point on equity as to allotment of a house in a final decree application in a partition suit, the judge has not cared to pronounce order on the point even after 6 months. The same judge is still hasty in reserving Original Suits for judgments. This tells the story of commitment the target system has been able to generate on many of our judges.

Pressured, as stated above, judges are overhasty in 'disposing' cases. But, for many of them disposing cases

means only to see to it that they reserve cases for judgements/orders. They do not show the same enthusiasm in pronouncing judgments/orders timely. They prolong it for months and months at their will while they are particular in refusing even a single day's hold up when it comes to handling affairs that are to be completed within the Courtroom in connection with the adjudication of cases. Is not pronouncing judgement the endpoint of target?

Why judges are given almost freehand in the matter of pronouncing judgement or orders? Why judges are allowed to carry forward a listed case to the next month or to any other month only for the purpose of pronouncing judgment? Why the procedural provisions relating to time frame for pronouncing judgements are overly benevolent in favour of judges? Now it's like imposing target system on lawyers/litigants at the risk and cost which they only are destined to suffer. The chariot will be pulled along by the horses, the charioteer needs only to sit in the chariot and lash the whip. The history is forgotten safely; in the past both the charioteer and the horses had been lagging themselves behind too much in forgetfulness of their common destination point- justice. It is now as if, by the target system judges have become committed ones overnight, while lawyers still remain just champions of manipulations and dilatory tactics as they have been ever before. Is a Court now a spot for tussle for judges and lawyers; judges for disposal and lawyers against it? Lawyers as a class is discredited and disgraced- this is the severe fallout of the target system and disposal drive.

The strategy explicitly adopted for tackling problems of backlog and docket explosion is to dominate lawyers and to constrain and coerce them to sing in unison with the yelling of the judges in their hurry and hastiness for "getting rid of" the litigations pending before them awaiting adjudication. It is very much serious a fact that getting ready for final disposal of a case is not as easy for lawyers as it is for judges. But this crucially important fact is blissfully ignored and lawyers are asked to get ready whenever judges ask them to. Lawyers' obligations and ethics have no place in the whole affair. This is the situation. Lawyers have no choice except to hurry themselves up for the final 'drama' in the Court if they want not to 'displease' the judges. What remains for the judges is to dash off something called judgement, often a toss-up for the litigants. Is the lawyer fraternity a community consisting of procrastinators and indolent ones alone and our judges exclusively a class consisting persons of dispatch and activity alone? "Yes, it is so" seems to be the fundamentally false and irrational supposition that is working behind all the hurrying up process. The approach definitely needs to change realistically. The following two points are also very much relevant in the context of our craziness for speeding up.

You must lead your witness

If a witness is allowed to be led by the summoner, trial is meaningless for obvious reasons. Therefore law of evidence squarely interdicts the summoner from asking questions that tend to lead the witness to answers which the summoner wishes his witness should give. The law

being absolutely sound, it remains without change even now. However, conspicuously violating that law, now the summoner is given absolute freedom to prepare in writing beforehand all what he wants his witness should speak in Court. Rather, the same is a mandatory legal requirement now as per OXVIII, Rule 4 of the Code of Civil Procedure. The only rationale behind the adoption of this absurd and extralegal procedure seems to be nothing but speedy disposal by saving time of Courts. How can the procedure of accepting evidence by affidavits followed by Courts not invested with original jurisdiction to record evidence be adopted to Courts obligated to try cases by examining witnesses in conformity with the principles contained in our law relating to evidence? We are missing the woods for the trees. The system is being made weaker and weaker.

Open Court

We have abolished trial by jury in our country after independence. Conducting trial is no more anybody's duty other than that of the judges with the active assistance of lawyers. We know that the key part in the process of adjudication is trial which primarily involves examination of witnesses and recording their testimony. Therefore it has been our law that examination of witnesses must be in the presence of judges and that their testimony should be recorded by judges, or under their direct supervision. Justifiably, we also introduced the concept of trial in the open Court by inserting Section 153B of the Code of Civil Procedure in 1976. Anyhow, the new provision made in 2002 for examination of

witnesses on Commission takes all the above essential elements off from our adjudicatory process on the civil side. Where is the open Court? Every corner where Commissioners sit is a Court? What is the work left for judges in the process of adjudication and justice dispensation if recording evidence is delegated to Commissioners? Is there any guarantee that Commissioners are adept in the work as the judges are supposed to be in that work? Can the responsibility of Commissioners be equated with that of the judges? What about a Commissioner's answerability and commitment? What about the quality of a work done without any botheration regarding elements of responsibility, answerability or commitment? Now your demeanour while in the witness box is also as is read and recorded by the Commissioner. In this innovation also, the justification is reducing workload of judges in order to enable them dispose of cases 'well', but numerically only. We recognise that majority of our people deserve free legal aid and at the same we add to the cost in different ways in the name of speeding up of our process of adjudication. It is known that even some of the family Courts have started deputing Commissioners for examining witnesses indiscriminately.

What judges learn / unlearn

A Tuglaki reform. Pupils who learnt writing with their right hand were asked on a fine morning to stop using that hand and to start writing with their left hand. Left with no choice, the tender ones managed to become lefthanders, unlearning the exercise with their right hand

forever. Metaphorically, target system, disposal drive, list system as it is now misemployed, ADR systems etc. have propelled and compelled judges to deal with legal disputes before them ignoring and dismissing the elements of justice, which is the primary concern in the administration of justice, and all other principles and values associated with adjudicatory process.

The lessons they learned thus are the lessons they should not have been allowed to learn under any situation. Those lessons will thrust a lasting impact upon the whole system. In our hastiness to do away with backlog, we have also compelled our judges to unlearn the all-important nuances involved in their task of delivering justice by adjudication. What is our scheme for bringing our judges back to the all-important values and lessons they have unlearned thus? Leaving the state of things as it is as if nothing is damaged? It is never safe. Whatever, the one important point that needs to be asserted here is that the remedy for the above dilemma is also with the lawyers only, but they need to realise it and rise to the occasion. They need to have an enthusiasm in ensuring quality in the outcome of judicial process. It is their responsibility. They also need to have a fascination, if not passion, for truth and justice as we expect that fascination from our judges.

Judges not to act settlers

Propriety demands judges shall not engage in conciliating and settling litigations. But we have adopted that impropriety as a rule. The blame is truly for lawyers. The system believes lawyers won't take interest in

conciliating and settling litigations, pending or future. The basis of this belief is the assumption that reducing litigations would be against the narrow professional interests of the lawyers. We cannot oppose the notion, because lawyers have not given a chance for others to think otherwise. Therefore the impression created is that lawyers prefer to discourage settling cases. This lack of faith in the lawyers' sincerity has resulted in the system devising measures for initiating and monitoring conciliation and settlement at the instance of judges. Law provides. Now, even while lawyers address arguments judges' attention is on exploring avenues for settlement and thereby they fail to attend to the points advanced on merits.

Caring-for-client lawyers

Conciliation is an issue ideal for the lawyers to handle, and not to be initiated or pursued by judges. Judges need only to assist lawyers when so required by them in the process and to acknowledge and record settlement if it is attained. This ideal course is possible only when lawyers begin to develop in them a caring-for-client attitude than for their hungry-for-clients'-briefs attitude. A good doctor treats his patient and not the ailment because he values the life of the patient and does not 'value' the ailment. Clients' briefs represent the predicaments the clients undergo in their practical life. To save and relieve them from the predicaments is the true professional obligation of the lawyers. This they shall strive to attain by all possible, but permissible, means... by fighting in Courts if expediency demands that course, or by arriving at amicability and settlement, then in that way.

Washing off causes

Back to target and disposal... When you want to get rid of something which you find unproductive or undesirable, dictionaries say, you think of 'disposing it of' or about 'its disposal' indicating your design to throw it away, or give, sell, or transfer it to another. Yes, if all ailments are unproductive, all litigations are also unproductive. But if recovery from ailments is productive and desirable only, then doing justice in litigations is also productive and desirable only. If people are beset with disease or denial of justice, earnest attempt for recovery or for doing justice is what is imperative.

Washing off hands when the affliction is at peak is perpetration just like washing off hands just before crucifixion of the Innocent. And we are doing that. The entire judicial system is streamlined for 'disposing of' the causes of the litigants. No more adjudication. All do have very much love for the Stats, scheming it will satisfy the people. Again, tricking people is not democracy; we need to bear this in mind.

Causes of the litigants are just bundles of papers to be eaten away quickly. They are only stuffs for the judges to cling on to their seats by achieving target. It is natural that judges want their job to be safe. This is the anguishing work-culture and attitudinal change that is brought in by the target-system among the judges. Do we need to stare our judges down to keep them working just like teachers do with the students when they skip homework? Such a lot of judges is not the kind we need in our country.

Backlog is the result of your own dereliction in performing your duty. People are totally innocent in the matter. By your dereliction you have already put people to too much suffering. People cannot be further strained on account of your dereliction. You cannot deny justice to the litigants amidst your hastiness that caught hold of you very late. Justice is their right. You need to administer it to them in the full sense, that too timely. You need to energise you up speed you up for recompensing your indolence, but that shouldn't result in miscarriage of justice. It is your lookout. Who decided people want hasty disposal devoid of justice?

Just tip of the iceberg

Just disposing cases and tackling backlog is not the first and the last of the import of the constitutional assignments of the Judiciary. Backlog definitely needs to be cleared up, of course without doing violence to justice anyway. But just tackling backlog is not going to save the Judiciary from all its blemishes. Backlog is only a tip of the iceberg. Captain planning to take the ship forward by chipping off the tip is fooling himself and the travellers as well. Tackling backlog is only, but definitely, matters of introspection and retrospection that will help us make our future free from flaws and errors. The impression that seems to have been made up is that the only problem with our Judiciary is backlog. This impression is undoubtedly delusive, dangerously delusive. It is tying up a blindfold across our eyes. But that won't save anybody for all the time. Individual working of all the Courts in our land together should cumulatively produce

such an effect that Judiciary is successful in its ultimate obligations of ensuring Rule of Law and of serving as the guardian of the Constitution. This must be the aim of our reforms in connection with the working of our Judiciary.

The spectrum of 'Justice Delivery' is hugely wide and it connotes many things in our democracy which is firmly founded on a Constitution. Hence, how far our Judiciary succeeds in ensuring, sustaining or promoting such a democracy needs to be the basis of the evaluation that is to be undertaken while attempting to fix it. Democracy needs to be the stakeholder always. Judiciary is one of the three organs of power with the responsibility to fetch the fruits of democracy to the people. It is a means to actualise democracy by working along with the other two organs of power conforming to the dictations of the Constitution. Therefore what needs to be done is to tune up the Judiciary to enable it to realise that essential objective. This implies another important point that we need to keep in mind that by mending the Judiciary alone Judiciary cannot achieve its constitutional objectives fully. We need to engage in the effort of mending the other two organs of power also in order to make Judiciary working effectively and thereby making democracy and constitution real and full to the people. In short, we cannot save democracy by fixing our judicial system alone.

Target tells on lawyers' output

It appears that lawyers have more time constraints than it is for judges. Their service is an emergency. They have to allocate their time for taking briefing, for preparing

pleadings and other proceedings, for inspecting sites, for getting ready for examination of witnesses, for preparing arguments etc. and for many other routines in connection with the profession. They will have to attend to emergencies also. A moderately successful lawyer seems to be more burdened than a judge in a Court with average workload.

A good amount of judges' work they do in the open Court. See, lawyers do no 'work' in Court. They only 'perform' there. They are able to get to their work only when they are free from Court. This aspect of the lawyers' chores remains behind unnoticed or overlooked. Judges are by and large incognizant and neglectful of this obvious and serious factor affecting the performance of the work of the officers of their Courts. Even for one-minute affairs lawyers are obligated to remain in Court waiting for their turn daylong. By the way, it is routine for some judges to start sitting at a time when they feel convenient to, especially during after-lunch sessions. Lawyers are kept waiting for hours together. Parliament holds that lawyers' reasons are not reasons for adjustments or adjournments in the work management of Courts. Remaining all these points invariant, 'speed' is demanded from lawyers.

Target system is devised in complete forgetfulness of all the constraints of the lawyers in connection with the discharge of their professional duties. This is unwise and unjustifiable. Here also the ultimate sufferers are none but the litigants only because they will have to satisfy with the poor quality of service their lawyers able to

render them within their (lawyers') constraints produced as a consequence of the target-system and speeding up. The system is hurrying up judges as well as lawyers. Justice is buried. Target is fixed as if it is exclusively a matter for the judges to deal with and nobody else has anything to do with it, not any at all for lawyers.

The fact that a lawyer is often constrained to render his service at multiple Courts simultaneously during the day remains out of consideration, and the law squarely prescribes the engagement of a counsel in another Court not an excuse. The law is missing suitability, because it is the system itself that requires, if not insists, the lawyers to render their service readily, which requirement if met by lawyers may entail the eventuality just stated relating to the poor quality of service.

How the lawmakers think the above eventuality would be practically handled harmlessly in a Court of law if the governing law is as stated above? Actually, the eventuality is an issue that ought to have remained within the realm of the propriety of the judges and lawyers. Here, the lawyers' credibility and trustworthiness is at the core. Their credibility needs to be such that judges do not err in acting upon their words. If lawyers do not belong to that sort of believable people, then the law referred to only is the remedy, though with some necessary evilness. How would lawyers defend themselves if one holds that the law reflects the incredibility of the lawyers as it is entertained by the lawmakers?

Blindfolded lawyers

Anyhow, if lawyers' case is that they hold themselves to be credible and that the problem is with the law, then it is for them to decide what to do with a bad law. But a significant query pops up here also. Do our lawyers show 'any' interest or concern in the changes or shifts that take place in our country's legal system on account of any legislative measures or on account of any institutional change over? Do they at least engage in any debate over a pending bill with a view to form a proper opinion on the efficacy or otherwise of the law in the bill in order to see to it that their standpoint inspires or prompts the lawmakers to open their eyes to the realities?

Though lawyers are the ablest class to handle those things fruitfully, they appear to despair us very much in such areas. Their outlook is confined to their narrow professional interests only. They are blindfolded. They are forgetful of their obligations and commitments to the society and to the Constitution. Profession has become their personal affair only and they have become 'professionals' only. Their purse is their concern, generally. Whatsoever, it will be profitable for them if they ponder over the queries like how people hold them now...as dependable ones...? Credible ones..? Noble or useful ones..? It seems people would despair lawyers in their seeking for the answers to these queries.

Optimising people-judge ratio

A judge definitely needs rest, relaxation and repose in view of the not-very-easy duties of his office. Courts are flooded with cases which cannot be managed by the

available lot of judges. If this is a real problem that we face, then the well founded people- judge ratio device must be accepted and adopted as a policy and brought into effect as an emergency at 'any cost'. No device would work better than that in the way of delivering timely justice.

Justice to be justice, it needs to be timely imparted. What we need is timely justice and not speedy justice or hurried justice. For imparting timely and attentive justice we need sufficient number of judges, if our case statistics is true. However, ensuring that the available lot of judges delivers their optimum output definitely needs to be a serious concern along with the initiative towards optimising people-judge ratio. Proliferating judges by misapplying public money is not what is meant by securing optimisation of people-judge ratio. Optimising the output qualitatively must be the objective. No use by the optimisation of number of judges if we are not able to make quality a guarantee. It will be just wasting public money further on the same count.

We should never fail in perceiving the magnitude of the impact the deficiency in the number of judges and Courts in our country has brought on the overall quality and quantity of the outcome of the work of the Judiciary. We need to study whether we need more judges and Courts and if we find that we need more then we should appoint sufficient number of judges and build sufficient number of Courts for making up the deficiency. There is no reason for us for not doing it. If we go on asking one judge to do the work of 10 judges, quality cannot anyway

be bettered than how that it is now. Quality would plunge further.

'No fund' is only a political ruse. Nothing more drains out, or hinders filling up of, the Indian Exchequer than corruption. An effective and well-knit court system leaves little room for the law breakers, the delinquents and the corrupt to escape with the booty. Cost required for optimising human power requisite for the judiciary to make it function properly and efficaciously would be only a paltry out of public money that might be saved by mitigating corruption by revamping and armouring the Judiciary. If we cannot have the excuse of "no fund" for the defence of our country, we cannot have that excuse in the matter of strengthening our Judiciary also. Both are in a way equally 'strategical' and crucial for the country.

High pay or enormous pay won't work wonder or magic is not without significance here. We need to remember that we live in a country where nearly 360 million of our fellow beings are living under poverty line even when the line is lavishly re-drawn making per day income as Rs. 32 in rural India and Rs. 47 in urban India as the criteria. This fact must count inevitably when pay is fixed. Servants gigantically richer than masters is really unrealistic and problematic a scenario. Equality cannot be opportunistically pushed into cold storage. Simplicity is the Indian value. The same cannot be forgotten forever by the learned and the enlightened ones, if not by all. Let Father of the Nation rest in peace. Ingenuity and integrity, money cannot buy. Money matters, but all not money-matters.

Pay State affair

Pay is an affair of the State, not any domestic affair of the payees. None can be assuaged by paying. Nobody has ever said "don't trouble me by paying too much". If the State finds it financially unviable to ensure people-judge ratio, the State may take recourse to revising the pay accordingly and affordably. Desperate situations call for desperate measures. Decent pay is desirable and is to be ensured. Don't play extravaganza with public money.

Quality brain is not a guarantee for dedicated service. Good money for good brain is only a bureaucratic sophistry. Dedication cannot be gauged in terms of money. Dedicated ones think of the poor and the downtrodden, and they remain humble in thought and go for modest living.

Timeframe justice

Delay in litigation is a boost and premium for unscrupulous litigants. No litigation whatsoever should go beyond one year on the trial side and never beyond further six months on appeal/s side, emphasis being definitely on timely justice, but by giving due consideration to the number of working days available in a year. Not only Judiciary but all the instrumentalities must be geared up and augmented to meet this timeframe dispensation of justice. However, the time frame shall not work out as a hindrance in the way of doing justice in exceptional and extraordinary circumstances which justifies extension of time beyond the time limit that is set for the purpose. Whatever, if we don't have any scheme for optimising people-judge ratio as our first

priority, all the cry over the backlog and delayed justice is only gimmicking the people. We should have enough Courts and judges. All the vacancies of judges of all the Courts including Constitutional Courts must be filled up in a flash. Or else no adjudication, only disposal drive and target mechanics. Anyhow, we need not add to the hierarchy. Increasing number of judges in the Constitutional Courts is enough if backlog and docket explosion are the problems they also face.

Timeframe as to appeals assume added significance. Deciding appeals involves only re-appreciation of materials already on record. Then why appeals are often kept in Courts for longer period than the period trial Courts generally consume for adjudicating original proceedings after going through, and getting over, all the so called procedural requirements and hurdles?

No delay at all should occur in deciding appeals. In a way delay in deciding appeals is more injurious than the delay that occurs in adjudication on the original side for reasons more than one. The most important reason is that appeals often serve as a ruse for the defeated party for indefinitely delaying the process of going through the 'consequences' of adjudication on the original side. Therefore, if appeals happen to be decided within the shortest span, definitely number of appeals that are filed with the sole objective of delaying execution of trial Courts' decisions would be reduced considerably, and in this way we may be able also to ensure that appeals with merits only are being filed. On the criminal side, who would repair the trauma and suffering undergone

by a convict if he is found not guilty in appeal that was disposed of several years after he started to undergo imprisonment? What we call sense of justice...?

Whatever, if we are unable to ensure quality in the adjudicatory process carried out by our trial judges, we cannot anyway check the number of appeals that are preferred from their decisions. By the way, reckoning number of appeals preferred from judgements of a trial judge should serve as an indicator in assessing the quality and competence of that judge, the rationale behind this being that worthy judgements reduces the chances for appeals being made from them. The above course if adopted would definitely better the quality of decision-making process at the original side. Quality judgements cuts down number of appeals and unworthy judgements proliferates appeals. This relationship between appeals and quality of judgements on the original side cannot be ignored.

Provision for appeals cannot operate as a green signal for trial judges to decide cases 'someway' or 'any way' compromising in judicial propriety and exactitude which are to be the basic, mandatory and inevitable components in their decisions. Every judge is under the obligation to deliver the most correct and most righteous judgement he/she is able to deliver. Appeal is not an escape route cut by law for enabling judges to flee safely from their responsibilities exposing litigants to undergo rubbing-salt-in-the-wounds experience. "Error is human" is the reason for making provisions for appeal, "judge is free to commit errors" is definitely not the reason. No man is

'free' to commit errors if he is in charge of affairs of other persons. Then, how a judge is?

Government's move

Policy of the present Central Government, though not materialised so far, towards optimising people-judge ratio is highly appreciable. It is one important step, only one important step. Let it come true, though that alone won't improve the situation. Other equally important concerns expressed by many of our country as well as the concerns we discuss here also must weigh with all authorities concerned in the matter of reinvigorating administration of justice of our country and in making our Judiciary unimpeachable.

Justice close at hand

Regional Benches for the Supreme Court and for various High Courts is not something inconceivable if we are adequately serious about rendering timely justice to our people. No rational justification is forthcoming so far for not establishing the Benches despite much clamouring for the same made on various other grounds of expediency. Law is the lifeblood of our democratic polity. Let the lifeblood flow and circulate through all the veins and arteries of our body polity and public life aerating them and purifying them. Are our power wielders presenting themselves to be so shy and dreadful of a Nation wherein Rule of Law is an actuality in every sense rather than the same remaining there as a potential allurement forever for the people? 'Yes', definitely seems to be the answer. Journeying from Cape Comorin to Delhi is only a pleasure trip for the Statesmen at the expense of

the State as well as for the rich who is able to expend from their heavy pockets, but not at all for the miserable litigants. Therefore regional benches.

Backlog and luxury of summer vacation

Abstinence from work for 45 days a year is indigestible and unintelligible to be recognised as just rest, relaxation or repose. Upright judges who champion the cause of speedy justice may come forward and forsake the prolonged, ironically remunerative, period of inertia and indolence. They must do so if they mean what they utter. We go a long way in rendering timely justice this way. Working more would yield more goes without saying.

45 days plus all the red figures on the calendar plus permitted leaves, how many days a year our judges receive pay by working? Add to this, Christmas vacation and Onam vacation... What else is all these if not fancifulness, injustice, inequality etc. concretised and exemplified. What would justify us if we do not show the modesty and propriety to put a stop to this infamous practice? Officers burdened with more strenuous tasks than that of judicial officers are there a lot in this country is an incontestable fact.

What do our judges wait for while Judiciary itself has unbridled power to do away with the practice? What is required in addition is only the sternness to do it. If they show the sternness, they will receive ovation from every corner of the country and from every walks of life. Summer vacation is a colonial relic which suited only to

the Colonialists. Colonialists wanted only to exploit us, but we shall not expose ourselves for being exploited by our own men. We cannot tolerate it at all.

Alienating judicial power

Detaching judicial power from the judiciary seems to be not in consonance with the scheme of the Constitution which provides only for one formal legal mechanism, the Judiciary. Constitutional provisions 'enabling' the Parliament /Legislatures for vesting judicial powers on Tribunals have been used unduly, often improperly. Alternative mechanisms are justified only by exerting to interpret Constitution.

The concept of Alternative Dispute Resolution is born in America. The fundamental assumption from which the philosophy behind the concept took its origin is the inefficacy and ineffectiveness experienced from the 'working' of Courts. But the reason for that inefficacy and ineffectiveness has not been, and cannot be, attributed to any inherent flaws in the design, structure or in the conception of the system. Actually, the human element involved in the working of the system is only at fault. This vital aspect needs to be discerned. And this aspect of the matter must be realised with all the importance it has and with all the seriousness it deserves. The solution desirable is to make repairs to the faulty human element by all means instead of discarding the system itself by going for via media arrangements disintegrating judicial power invested with Courts. We need wise and virtuous men to take charge, wise men whose wisdom is governed by their down-the-line virtuousness.

The alternative move is sufficient only to lower the faith and confidence of the people in the judiciary, the significance of which (faith and confidence) being the fact that it provides an ideal ambience necessarily required for the judiciary to function effectively. A court system which does not have the faith and acceptance of the people is definitely a weak and ineffective one. It will crumble down easily like a castle of cards.

Quacks

Yet another point having relevance in this context is the fact that the service of judges and lawyers is a specialty. It is unwise to approach quacks where experts fail. Quacks kill the half-dead. So what is wise and desirable is to prepare the experts themselves ready for taking charge with all the responsibilities. This discussion concentrates much on this area. Mankind has not devised any other finer mechanism than the independent Court system for justice dispensation. Judiciary has no alternative. Any attempt to weaken or stultify the judiciary smells a rat and therefore must be vigilantly guarded against. Vested interests work behind the stultification process. We need to identify the forces behind the vested interests. Their target is to maintain a most weak or broken-down Court system so that they are left uncaught.

What ADR disseminates

What is our plan? Just trimming down backlog or reducing accumulation by bringing down influx of cases through persuasion by all possible ways and means? Coming to the backlog, why backlog piled up? Was it

due to limitless immensity of filing or was it due to the inadequacy in the amount of work put into by judges and lawyers in carrying out their obligations? If the answer is that the fault is on the part of judges and lawyers, people cannot be troubled any way for that fault. They have the right to litigate and get judicial remedy timely and adequately from Courts for their grievances. They cannot be asked to go elsewhere in search of any alternative. It seems no alternative is any easy-peasy alternative also. Strengthening and invigorating Judiciary is the proper remedy either in tackling backlog or in addressing docket explosion. Why people-judge ratio still not a remedy for us? While Law Commission recommends 50 judges for a million people, we are satisfied with 10.5 or so for a million.

Litigants' choice is generally judicial determination of their disputes. It shows their appreciable civil sense. Backlog is not their dilemma. They have no role in it. They more or less do not think about an out of Court solution, especially when once the dispute has already been carried into Court. Therefore the problem is that they need to be persuaded or brainwashed for making them go for alternative resolution for their disputes.

How then can they be persuaded or brainwashed? Only by convincing them about the troubles and difficulties they will have to face if they stick on for a decision by Court. Ultimately, by the time they decide to opt for any alternative method, they would have got a "true picture" regarding what the Courts are good for. "If you continue with the litigation, it won't end even during your lifetime,

probably not even in your son's". This was heard uttered by a judicial officer in the presence of around fifty persons while the ooficer was putting his effort into in persuading a party for settlement of a case came in a Lok Adalath. What are we disseminating in the name of the alternatives? Is not the officer's utterance contempt of Court in the real sense?

The message that alternative mechanism circulates among the common people this way are two-fold, that Courts are incapable of deciding disputes without inordinate delay and huge cost causing too much loss and difficulties to the people, and that there are alternatives which are more efficacious, timely, cost-free and hassle free than the Court system. Should we need to do anything more than this for diluting and draining out the faith and confidence people still hold in their minds towards the Judiciary? Still we demand the very same faith and confidence from the people is the irony.

It seems that any grievance is subjective. Therefore, primarily, it is the voice of the aggrieved that is to be examined for ascertaining whether he has come up with a real grievance or not. It is interesting, what is a dispute that deserves determination by Courts and what is the one which does not qualify for that deserving. Trifles apart, can we classify disputes into two such species? How do we decide a dispute to be actionable or otherwise without involvement or intervention of a Court of law? A lot of public money and human power is squandered on ADR programmes instead of the same being used for

optimising justice delivery through Courts (JDS). No reason. No purity of intention.

Quacks again

Here I may share a representative instance. On remand of an ARC proceeding by the State Co-operative Tribunal, I appeared on behalf of my client respondent in the proceedings in front of the Arbitrator, an officer of the Co-operative department. While adjourning the matter to be called at 11 O'clock on the next day, representing regarding my preoccupation in the morning session before the 'regular' Court, I made a humble request with the officer to make the sitting after lunch if it was not inconvenient to her. "Is this not a Court..?" Her incensed response unhesitatingly came that way.

Yes, what is a Court and what is not one? Who is a Judge and who is not a judge? Who is a lawyer and who is not? Do we want the finer distinctions between them to survive for any good reason? This is the crucial question. Whatever, the officer in the incident thinks the distinctions are thin, pale and insignificant. Approvingly Parliament, complemented by Judiciary, is keen in its efforts to detach judicial power from Courts wherever possible as if the powers are exercisable by all and sundry. Side by side, the effort to keep lawyers away from courtrooms and from adjudicatory process is also in progress. Is there any defined limit beyond which judiciary cannot be drained off its powers? -we will have to hear that query in the long run, if not in the near future.

In our locality there has been a Land Tribunal Tahsildar who does not even permit lawyers to enter the hall where he sits to hear cases until their respective cases are called. These officers often think that they are much more than a Court. By the way, lawyers are pious even in front of these officers is a dejecting fact indeed. Even the amendment brought about in the Bar Council Rules in connection with the address issue is forgotten by lawyers when they appear before these officers too.

A bit on addressing words

Addressing words help only to balloon and bolster up the ego of the addressed. An egoist is further spoiled by the words. A self-effacing man is never carried away by the words. He is rather indifferent to them. "Judges should be addressed in Courts in a respectful and dignified manner". This impersonal position maintained by the Apex Court on the issue is unassailable. Lawyers have the duty to maintain the same also. However, the truth behind the issue is exposed when we ask whether the Judges are truly impersonal as reflected in the words of the Apex Court and whether the exhibition of respect by lawyers even before officers like the Land Tribunal Tahsildar referred to above reveal their real dedication to, and fascination for, the Court system. As for a Court respect is a mutual obligation between lawyers and judges. It has nothing to do with the ego of either of them. Place for respect-maniacs is elsewhere. Respect relentlessly follows men who are lucky to have had the realisation that all human beings are equal and equally respectable. Only such men deserve respect and they

take respect from the people without demanding it from them. Is it insufficient if we address our judges 'sir' wherever they sit? Is the word 'sir' anyway a diminutive or a word indicative of declension?

Why Quasi-Courts etc.?

Coming back to the issue of alienation of judicial power, an important question seems to be extremely relevant. Why can't judges of regular Courts adapt themselves and get ready for dealing with matters demanding differential treatment by taking up in their own hands the specially defined procedural requirements and relaxations prescribed for such matters instead of apportioning judicial powers among hands judicial and quasi-judicial or especially judicial? Alternative arrangements and our dependence on the 'quacks' help belittle and discredit the significance and worthiness of our regular Court system.

Subjecting the performance statistics of special Courts and Tribunals to scrutiny and analysis is a relevant input in this context. The 'enabling' provisions in the Constitution for establishing such Courts and Tribunals appear to have been misused or overused. It is a contradiction that we are overly enthusiastic in putting to use enabling provisions while we are unduly indifferent towards making mandatory provisions working.

A general impression is created that Court proceedings are cumbersome and time-consuming and that the Court system is inefficacious on account of these factors. It is

this belief that has served as justification for alternative originations like quasi-Courts etc. etc. The belief is not completely unfounded also if we speak from our experience. But the true fact is that this belief has no connection with any intrinsic inefficacy of the Court system. What actually went wrong was (1) those in charge of the Judiciary did not execute their assignments optimally and they stayed on under-working, and (2) we didn't care to fine-tune our legal system and to make it people-friendly and need-oriented one. We just followed the system handed down to us by the Colonialists for whom the system was only a device for exploitation and oppression. These ways we ourselves paved the way for the sprouting of the above pessimistic belief regarding our Courts among us. And we started to work on that fallacious and self-imposed belief. We are searching for non-Court or pseudo-judicial solutions for tackling the so called obstacles in the way of our justice delivery process. We need to realise that these misguided efforts would help further weaken the Court system and to take the people still away from the Courts. And this is the contradiction our political statesmen and their cronies seem intend to maintain forever in the country for their own thriving. They have identified that an effective Court system is always a headache and nightmare for them.

Ours being a polity designed to thrive and sustain on the bedrock of Rule of Law, it necessitates an effective Court system which is able to inspire faith and confidence of the people in the same. Loss of hope for the people in the Courts and their efficacy is the most challenging impediment in the way of progressing to a polity which

is anchored on Rule of Law. This is what has happened to our polity. Therefore it has to be our immediate priority to fix and mend our Court system and its working so as to enable it to take the people into confidence. Urgently we need to concentrate on this operation if we have the real desire to have the Constitutional dreams translated into reality in our country. Constitution with an impaired guardian is equal to having no Constitution. You cannot outsource enforcing Rule of Law to any makeshift or parallel agency. If you do so, you cannot but without exposing the very system itself to further ruin.

Lawyers' ethics

Lawyers need to render their service only where their service is actually warranted, either be in the offensive or be on the defensive. This is what 'the ethics' dictates them. Advice, counsel and conciliation are integrally part of the profession and chargeable too. Lawyers shall strive to enter the Courtroom only with substantial issues of justice having their roots on facts and evidence which are true and clean to the satisfaction of 'their' conscience. Therefore the initial filtering of causes must take place at the hands of the lawyers. That means lawyers need to single out litigable cases before they take their clients' causes to Courts. It is to be noted that it is not rare that proper advice and counsel saves actions at law, even litigable actions. These ways lawyers may contribute directly to the cause of timely and qualitative justice. Definitely, it is their obligation too. Let the courts be not flooded with unwarranted and frivolous litigations. Let our judges deal with cases involving real and substantial

issues of justice. A Discriminating lawyer reduces Court fights. And a lawyer cannot but be discriminating. A good doctor prescribes very little, often not at all.

Lawyers are not to be liars as they are notoriously kwon among the people generally now. This is how they are known is really unfortunate. Lawyers are not professional liars. They are not to be just gladiators procurable on hire. Believably, an ethical lawyer is not something inconceivable or unattainable. Who says lawyers are licensed to plead injustice and utter lies in Courts and thereby to advance injustice? Is it our tradition that we are fostering lawyers for playing the role of perpetrators of injustice? No, our law as well as ethics of our lawyers permit them only to plead justice and to advance justice. Fair trial is meant to ensure and enforce justice, not injustice in any manner. It is aimed at keeping injustice out, never to welcome or absorb injustice into the system in any secretive manner. Lawyers cannot be allowed to misuse fair trial mechanism. Perpetrators are perpetrators, no exception. There cannot be any kind of glorified perpetrators in our system.

The dirt

Lawyers should not close their eyes tightly against the service element involved in their profession. It is very late. Lawyers should toil to clean up the soiled image of their profession by cleansing their own hands, the hands which got rusted due to their longing for money, more money. If any person answers "for money" for the question "what he works for", we can only do lament for him. One cannot have the morale to stand for or fight for a cause if

one is after money, is the ethical prescript. Even so lawyers have chosen "after money" as the routine of their profession. That they can, but how long and to what extreme lawyers expect society should put up with them if they continue to do so? Again, we need not search elsewhere for the reason for the sorry figure of a lawyer begging before a judge like a mouse under the teeth of a cat. What else can we expect from morally weak ones?

Your material prosperity has nothing to do with the discharge of your professional obligations as lawyers. Of course, your livelihood is your right just like it is for any others. But you need to understand that it is not for ensuring that you fly high that you are made lawyers. Society conferred lawyership upon you just because it cannot sustain without your service; it badly wants your service. You are under the obligation to provide your service in the best possible way that it suits the requirement of society. If you do that, society will never let you down or disappoint you. You know very well how the whole system is supposed to work; you know it more than anybody else knows it. You cannot ignore it blindly and aim at your own personal thriving only by manipulating your great and noble profession. You need to start thinking in terms of how society is benefited by your profession. You don't own your profession on your own. And the profession doesn't own any nobility on its own; it's your nobility that makes it noble. It's your responsibility. Indian lawyers have become limitlessly costlier that their service has become unaffordable to the Indian masses. It appears that our lawyers are licensed money-grabbers. Though justice is the basic right of the

people, it has become the priciest stock-in-trade with the lawyers. The system needs to devise a mechanism to regulate the 'service-trade' in terms of money-flow.

Money-matter

We believe money brings or buys everything in life. So we are after money only. We don't ask ourselves whether money brings everything in life. If the richest man in the world is still running after money, for him money is only an obsession than a need. Being obsessed with money, all his faculties and engagements are compulsively streamlined for dealing with that obsession. His aim is, and he schemes for, all the wealth on the Globe. Unfortunately we are prepared to leave the Globe at the feet of such men for materialising such aiming and scheming of theirs. Money has become God for us, a substitute for anything and everything.

It's inexplicable why psychiatrists don't include man's obsession with money in the category of Obsessive-Compulsive Disorder. One may not be able to diagnose any obsession that one shares along with others. This may be the reason for the psychiatrists. Money is a common obsession, an obsession that eats up humanness, humaneness and the whole humanity as well like cancer. Money outsmarts common sense as well as super intelligence. For man money is 'not' what money does. For him money is what that leads the whole humanity to its doom. Definitely there need to be a change in his attitude towards money. The change will save not only the humanity but the entire Globe. There is no other way out.

Money is not everything. Father of our Nation was not a money-man. But he lived a wondrous life that gave meaning to the life of every Indian by leading the life of a "half-naked fakeer". But it's relevant, what do we copy from his life and what do we conveniently discard from his life? It's the story of our hypocritical diplomacy. We celebrate him wonderfully. And we know the exact distance at which our values and precepts should be kept away from our lives. Our hypocrisy is superb and it is an art for us. It is a way of life for us in our public as well as our private life. Money and materiality rule the realm is the drive underlying.

Karma

The incomparable Indian principle of '*Karma*' (unconditional service) is in oblivion. Now we cannot imagine doing any act or deed without getting something tangible and transient in return. So cognizance of our judges is locked up in salary and perks and of lawyers in fees and tips. Your line of work is for your benefits only, but when your line of work becomes 'karma' it takes you and society together to the heights and sublimity. Dedication and sacrifice are the basic feeds, the basic virtues, the attributes of your refined nature. Where the inspiration to come from? Moral philosophy or any value system? Our inclinations... decide. It's your choice.

Big lawyers

Each brief or cause should get sufficient attention that it demands from the lawyer. The clients entrust their causes with lawyer of their choice with that expectation and with that faith. If lawyer is not able to live up to that expectation

and faith, it would be disloyalty to the clients. A lawyer is not one among a rare or endangered species. There are plenty of them. So a lawyer should try to limit accepting briefs giving due regard to the amount of attention he would be able to pay on the briefs he accepts. Time constraints cannot be ignored. A lawyer with a caring-for-clients attitude would definitely pay attention to this material aspect concerning his profession.

It is an uneasy scene in the profession that lion's share of the briefs is accumulated in few offices and the residue is spread among the bulk. This is the scene in almost all Court centres. This serves as the main cause for degeneration of the profession in many and varied ways. It tends the bulk to be corruptible. The reason is perceptible. 'Big Lawyers' who do have real concern for the profession may come forward and illustrate themselves as models. It may initiate change. At the same time "any lawyer is a good lawyer" is the challenge the novices of the fraternity need to take on and win. That will definitely dematerialise any dominance, ascendance or monopoly. And that itself is the fitting answer for the problem.

Lawyer of choice

Lawyers should never meddle anyway with the absolute freedom of the litigants to choose lawyers of their own choice, because it is the denial of that precious freedom of the litigants that serves as the starting point or epicentre of all the degeneration in the profession. Lawyer of choice is a constitutional right of the litigants. Paradoxically, lawyers have always been winning masterfully in

abnegating this right of the litigants and thereby paving way for degeneration of the profession. The tendency for the denial springs up only in a corruptible mind. It is the duty of every lawyer to see to it that he never paves the way for any degeneration of his profession in that way or in any other way. It is also his obligation to expose his colleagues who indulge in any unwholesome practice if he is truly loyal to the profession. No, no to touts, no no to agents...helps much in saving the profession from its corruptibility.

Having noted all the above blots attributable to lawyers, it is relevant here to remember the obligations of lawyers' associations and organisations in the matter. It is suffice to observe that all bodies meant for regulating lawyers and their profession as well as any other organisations or associations formed by lawyers cannot go forward anymore without concentrating on the task of purging lawyers and their profession from all the impurities gathered and deposited by lawyers on their own image and on the image of their profession. No time left.

Clerkish

Ethics of lawyers would be incomplete without a word on the ethics of their clerks. Without clerks lawyering is not easy to manage. Clerks' service is truly substantial. But lawyering is not clerking and clerking not lawyering. Lawyers serve clients and clerks lawyers. This is the order. Answerability also is in that order. If lawyering is not exploiting, clerking also shall not, and it is the look out of the lawyers. Unholy alliance between a clerk and

his lawyer is all blameworthy. No compromising of dignity and integrity of lawyers. Clerks' ethics; how is the lawyer, so is the clerk. Unfortunately, there are clerks who have grown much bigger than their lawyers. Their mouth is wide open that they are able to swallow even their employer lawyer and his clients together. Lawyers only are at fault.

The ministerial staff

Turning at this point towards this people who have a very significant role to perform in the effective functioning of the Judiciary seems to be not inapposite. How the know-how and attitude of the ministerial staff in the Judiciary affect the functioning and outcome of the Court system is actually a very serious matter that needs special attention and review. That area of the system always remained a neglected area. Moulding and orienting the staffers suitably is a must. They need to have a realistic perception of the business they are appointed to perform. That essential realistic perception is extremely lacking now. What is serious is the business and not they. Now it is otherwise.

Apart from their corruptibility and indolence, the staff, of course, exceptions apart, have not been able to realise and acknowledge the place or position lawyers occupy in the realm of affairs relating to justice dispensation in the country. This is an abject fact. It seems that they think themselves to be next in position to the presiding officers aand lawyers to be outsiders. They have not realised that they are supposed to serve the presiding officer as well as the 'officers' of the Court in the process of adjudication.

Serving is not slavish in democracy. There is no question of any superiority or inferiority in serving. All serve the Nation.

Many of the staff is desperately reluctant even to behave with, let alone serve, lawyers in a dignified manner. They consider lawyers as a second order people and they consider themselves to be all in all of the Court. They behave as if they are the bodyguards and guardians of the Court and consider lawyers as people who illegally infiltrate into the territory under their guard. It seems that there won't be any lawyer without having undergone at least one bitter experience from the part of the staff due to this whimsical, unwarranted and offensively self-assertive attitude of the staff. However, it is to be noted here that this reference of bitter experiences is not regarding lawyers who are servile and sycophantic even before the staff.

This situation needs to be changed. The Judicial system functions for the people. Not for judges, not for lawyers and not for the staff. All are servants of the people. All need to learn what the system requires from them and to act conforming to, and also within the confines of, the requirements. This essential fact need to be there in the minds of all concerned. Needless to say, the staff is expected to work and conduct themselves only in consonance with what and how the system requires they work and behave. They are not overlords of any territory. Prime Minister's guard may be constrained even to search the body of the Prime Minister himself for security reasons. What will be the situation if the guard thinks

and acts as he is above the Prime Minister for that reason? Work needs to be worship for the Prime Minister as well as for the guard.

Who surpasses who is not essentially part of serving. If anyone feels he/she is more qualified and abler, it's ideal for them to quit and find out avenues where they could be more productive and creative than continuing in the original position with a frustrated mindset producing harm to the system and to they themselves as well. On the one hand, here is a salute for those many fine officers who stand apart and keep themselves away from all these blemishes, and on the other hand here is a finger-pointing on those lawyers who fail to conduct themselves in the self-respectful manner fitting to a member of his noble profession. What ye sow is what ye reap is meaningful everywhere and always and it is a suitable and practicable lesson for lawyers too.

The head of the ministerial staff of a Court misbehaves with a lawyer. Thoroughly aggrieved by the misbehaviour, the lawyer places a complaint before the Bar Association seeking it to discuss the issue and bring the matter to the attention of the concerned authorities for initiating proper action against the officer. Convinced of the gravity of the allegations, the Bar Association, by a unanimous resolution passed in the General Body meeting, forwarded the complaint to the Presiding Officer of the Court requesting him to initiate proceedings against the staff officer on the basis of the allegations. Then it was heard that the presiding officer sought written explanation from the officer. Later it was known that the

presiding officer ventured also to record the statement of another lawyer who had witnessed the incident. Nothing more is known about what transpired thereafter on the complaint is the story. Though the Bar Association approached the Presiding Officer on multiple occasions, nothing turned useful.

The Presiding Officer who is reluctant even to furnish copy of the reply filed by the staff officer to the aggrieved lawyer or to his Association is actually, apart from revealing his unfitting ignorance of the basic principles of natural justice, imparting to the staff a wrong lessen on the dignity of the lawyers as well as on the position lawyers occupy in the system of Courts. It is also a lesson for the staff on what lawyers deserve and how to deal with them. Actually, it is for the judges to see to it that the staff bear in their minds what the dignity the "officers of their Court" is entitled to while the staff attend to the lawyers. Lawyers' dignity is more or less on par with that of the judges. Anyhow, what the fate the complaint referred to above would meet with is still mysterious. The complainant lawyer is being duped, of course, the Bar Association also.

Slips of Judicial ethics

We often hear, justifiably, about issues concerning ethics of the lawyers' profession, but we hear very rarely about issues concerning judicial ethics, adherence to which is more serious than to the professional ethics. Is this because judges never slip from the canons of their ethics? Never, we know from our experience. Or is it not because

judges are disinclined to introspect and point their fingers back against themselves? Yes, undoubtedly.

Considering the ramifications of violation of the rules of judicial ethics, it is a must for the moment that there be a deliberation on the issue and an ensuing action plan to ensure that judges stick to the ethics by which they are governed. A revamping of the system necessarily demands such a course of action as a first priority.

The magnitude of judicial corruption is so notorious that taking stock of it has become unnecessary for an Indian to become fully informed of it. Corruption is multifaceted and complete. As a matter of fact, judges and lawyers are equally part of it in their own way. Judges should position themselves on the forefront to lead the crusade against the corruption that has turned the face of the Indian Judiciary ugly. And lawyers should position themselves just behind the judges in the crusade. No other remedy works better than this.

Now, lawyers are corrupt as the judges are, rather more than the judges are. The difference lies in the only fact that they are not as exposed as the judges are. This is because they are not part of the Judiciary viewed from the 'establishment' point of view and so chances for their corruption being exposed is lesser. Seclusion and secrecy help them stay uncaught. Does it mean that lawyers are free and independent to do anything they like for overexploiting their clients by misusing their professional position? It is essential that corruption among lawyers too must be eliminated if we want to make our Judiciary

free from corruption. Anything is befitting to judges and lawyers can never be the state of affairs anymore.

Our previous CJI's persona

Coming to our discussion on judicial ethics, one question is significantly pertinent. Is our system so infirm, or is our morale as a people so feeble that we have been ineffective and unenthusiastic in ascertaining the truth behind some serious allegations of 'misbehaviour' raised against one of our previous CJIs, Hon'ble Justice H.L.Dattu, by onymous persons including none other than Justice Markandeya Katju, former judge of the same Court? '*Sathyam brooyaad*...' Don't we need to possess the propriety and earnestness to purge the innocent and to penalise the lawbreaker played in the episode, whoever be the persons involved?

Judicial dishonesty

The entire legal system is running on two notions or beliefs which serve as the two assumptions that are believed or taken for granted to be working without any lapse underneath all the adjudicatory process. And these are the beliefs that provide us with the foundation and the moral strength to accept all verdicts and convictions passed by our Courts even though the convictions may range from imprisonment to death penalty or the verdicts may deprive us of our properties and belongings. The two crucial beliefs or assumptions are:

i. *A judge is honest always;*
ii. *A witness would speak only truth before a Court of law.*

A judge is honest, because he has fully realised the significance of he as a judge being honest in the process of adjudication; besides being trained to be honest, his office induces, inspires and, above all, obligates him to remain to be honest. So the assumption a judge is honest.

A witness is assumed to be truthful on the assumption that people 'generally' are truthful. Generally they love truth and prefer to stick to truth. And they are generally disinclined to speak untruth because they are God-fearing or they honour their own dignity. So a witness who swears in the name of God or on his own honour won't speak untruth. This is how the second assumption.

Disastrous would be the consequences if those two basic assumptions are proved unfounded or found to be not working as believed. People would lose all the faith and confidence they have in the administration of justice and adjudicatory process. The convictions and verdicts then would become nightmares and adjudication a cruel mockery for people. Death penalties are then cold-blooded murders, imprisonments illegal captivities and deprivations of belongings just lootings, from people's point of view. Nonetheless, the two assumptions seem to be working very meekly, often counterproductively.

Among the two assumptions, no doubt judicial honesty occupies the primary position. It is brought about that we cannot dispense with that honesty anyway. Neither can we dilute it. Then, how much honest are our judges? How many of them are honest?

There is a predominating fact which is clearer than the daylight. Whatever plans and precautions we may make in order to rule out casualties at the human hands, ultimately every effort at gaining common good takes us to the individuals' volition and subjectivity i.e. every gain or loss depends upon the volition and subjectivity of the individuals in charge of our affairs. Subjectivity is the precursor of dishonesty. Dishonesty sprouts from the tendency to be subjective because egoism and selfishness are features of subjectivity. So in the absence of subjectivity, dishonesty has no life. To be able to win over the tendency to be subjective is the toughest experiment in the way of getting transformed as a good judge.

There is no substitute for man is his greatness. And the greatest tragedy for man is also that there is no substitute for man. Every journey aiming common good ultimately succeeds or fails according to the quality of the persons at the helm. This is why we say our judges must be wise and virtuous. Not only judges, but every person in charge of the affairs of the people must be. People also need to be civilised is a closely connected issue.

No salvage

There is a most unfortunate destiny attached to judicial dishonesty. That is the fact that there is no remedy under the sun for judicial dishonesty. And that is why judicial dishonesty has been counted as the worst form of sin. Our judges should realise this without any relapse. They may not commit the worst of the sins. A conscientious judge only can keep himself away from the sin. It is

absolutely necessary that there must be a mechanism to deal with particular incidents of judicial dishonesty.

Coming to courtroom situations, what remedy one has if a judge does not record a relevant question and its answer while taking down depositions, or if he ignores a material point urged during oral address while forming his judgment in the case? By the way, with some judges recording deposition is a pick-and-choose affair. Questions put by lawyers are only to be blown in the winds for such judges. There are instances where judges ignore precedents even when they are produced along with notes of arguments. What is the remedy if such decisions are not even referred to in the Judgements? What if all these are done as part of dishonesty on the part of the judges? There is a need to monitor each judge individually for ensuring that none decides dishonestly; how far that course is practicable is a different aspect.

Lawyers targeted

Targeting lawyers who are not servile or who choose to stand bold is widespread among judges. Judges go even to the extent of spoiling cases of such lawyers without any prick of conscience though they know that the ultimate sufferers are the clients and not the lawyers. Is not this a plain instance of severely reprehensible abuse and misuse by judges of their office, position and authority as judges? They do act without any sense of justice and they are blind and rude as the hooligans on the streets when their ego is any way hurt. Ironically, mastery in gratifying or comforting judges' ego has been glorified as one among the curious tricks of the trade and

distinguishing mark of an adept lawyer. It appears that there is no intelligible reason that supports this approach. Anyhow, now "language is the tool of the trade" has gone with the wind or it has become less significant; now soapy language is the tool and a soapy attitude greatly adds to the trade is the secret of being adept, and 'successful', too.

Fear psychosis and aftermath

Actually the above revengeful attitude of the judges has developed a kind of fear psychosis among lawyers that they never do anything they feel would affect the ego of their Presiding Officers. This is one of the reasons or excuses for lawyers for not being responsive even when behaviour of judges or Courtroom situations calls for stern responsiveness. Each lawyer has an excuse that his responsive attitude would tell upon the fate of his clients' cases. None is bold to think otherwise. The net result is assumable. All choose to stand servile and often sycophantic. The impact this had on the lawyers as a class is extremely serious. They have become unduly submissive and subservient a class which has lost the morale and responsiveness inevitably required for the noble profession they are engaged in.

At the same time, it is to be noted that whatever may the attitude of the judges be, there is no justification for lawyers for being so vulnerable as to be afflicted by the fear psychosis generated by judges. It is their duty to stand strong and rise to the great stature of their noble profession without forgetting or compromising their professional obligations any way. If lawyers want to

achieve the above objective of professional excellence and nobility, they essentially need to have a collective voice, which it seems they don't have now even for namesakes. They never flock together. "Same-feather-birds never miss any opportunity they get to mutilate each other" would be the befitting formulation as far as lawyers are concerned. Lawyers need to learn to realise the value of their brotherhood and they need to recognise the wholesome change that they would be able to bring about on the whole system by their concerted effort, collective wisdom and united responsiveness. The 'fraternity' becomes meaningful only then.

Anyway, the fear psychosis referred to above, in turn, has given judges the free hand to do and act what they like and how they like without any resistance from any sides and this apparently is among the main reasons for the sorry figure the Judiciary has cut on account of its poor performance and notorious corruptibility. As stated above lawyers have an infirm excuse for not being responsive. Nevertheless, it is also necessary to state here that lawyers often misuse this excuse also as a shield for justifying their general callousness and insensibility they conveniently maintain for the sake of their selfish professional and personal ends forgetting their obligations towards the system and to the people.

The overall scenario is that lawyers as a class have become non-responsive as well as irresponsible whatever happens in, or to, the Judiciary. The reality is that even a signal of change is just impossibility in the case of Judiciary if lawyers are not ready for changing their

attitudes and approaches towards the system of which they are an integral part. Mindset of lawyers is extremely crucial an issue. Moulding up proper mindset needed for a lawyer must be made an essential part of their curricula and training. It is the obligation of the lawyers to maintain the high moral stature, morale and strength to face any challenge coming up in the way of maintaining the dignity and nobility of the profession and thereby optimising the efficiency of the Judiciary. Any excuse is not an excuse for them. Nothing great can be achieved without sacrificing anything. Integrity and competency of the lawyers is the only answer for the corruptibility and incompetency of the judges.

Independence of the Bar

What our lawyers know about the principle of independence of the Bar? It seems our lawyers need to be apprised originally that there is such a variety of independence linked up with their profession. Lawyers are almost oblivious and neglectful of the principle and they remain as if there is no such principle. Actually, it is the concept of independence of the Bar that defines and indicates the position of the lawyers in the working of the Judiciary perceptibly. Judges have the unavoidable obligation to acknowledge and respect the independence of the Bar. They have to keep in mind that independence of the Judiciary is meaningless without independence of the Bar. Dignity of the legal profession and of the lawyers is only a mirage if lawyers do not show the spirit to uphold their independence, the spirit the system expects they would maintain in relation to their profession for

ensuring effective functioning of the Judiciary. People believe their lawyers have the mettle to fight for justice and to fight against injustice, the mettle never being impudent. People also believe that what their lawyers advocate in Courts on their behalf is never left unconsidered for any reason. And these are the beliefs that give reason for the people to have faith in the Court system. Without independence of the Bar, the expectations of the people reflected in their above beliefs can never be actualised. Bold lawyers and sober judges, the two secure pillars of the Court system- this is what independence of the Bar secures.

Prisoners of ego

Whatever, there are stories, to serve as allegories, of lawyers whose profession has been seriously affected by atrocious Presiding Officers. Is there any judge whose profession has been spoiled by the work of lawyers? Seem to be rarest. Judges cannot become vengeance wreckers.

The attitude of our judges towards their noble task, towards the briefs before them, towards the cause of the litigants, towards the lawyers and towards society at large certainly decides the quality of the service they render. All these vital aspects and points must be instilled into the minds of the judges. Their commitment must be only to justice. A judge should grow above his/her ego to be a conscientious judge. He cannot be allowed to be a prisoner of his ego, his personal prejudices or predilections.

Judging is not authoritarianism, nor is it showing off authoritarianism. Judges are not authoritarians in democracy. They are powerful enough only to decide the controversies submitted to them for adjudication in accordance with law and legal procedure. A judge is not sitting on the top of the lawyers exercising any dominion over them. Judges and lawyers are equally obligated to uphold the dignity and decorum of a Court. Elevated seating is primarily for audibility and visibility. Judges and lawyers are colleagues, primarily. At the same time, lawyers should readily acknowledge the fact that the duty to conduct the business of the Court is squarely on the shoulders of the judges as they are the presiding officers of the Court and that as such judges possess ample powers to 'regulate' the conduct of the business. Propriety and appropriateness on the part of the judges as well as on the part of the lawyers are the only answer for any awkward or inappropriate situations inside the Courtrooms.

A personal recall

At this moment I do remember how the Hon'ble High Court of Kerala opted to deal with a representation I made to it with a request to look into the behaviour of a Judicial Officer that was sounded to me as needing some correction and reformation. The representation contained a true appreciation that the Officer is "a person having every potential to evolve as a good judge". Along with it I expressed an innocuous, but appropriate and good, desire that the officer needs "some correction and reformation". I cited certain specific instances indicative of the need urged.

However, the Hon'ble Court didn't incline to take the matter to its logical end. My bona fides was seemed to be its concern. The Court pleased to close the matter in such a way that it produced an impression in my mind that the Court was more inclined to victimise me and that it did not want to encourage the kind of actions I pursued anymore in the future. This in turn gave an impetus to the Officer who had already become antagonistic towards me after knowing about my representation. What all ensued are only my experiences I treasure. I find the ghost I freed up then still seem to haunt me disguisedly. But, thank God, I started watching the system more closely since then. The officer played my Guru, Pranam. I learnt, tough times never bad times.

Our CJI's concern

The lesson we may learn from the above illustrative incident and from the strict and consistent view Judiciary has taken against making disparaging remarks in the judgements by appellate judges against lower Court judges is that Judiciary is not inclined to bend for a correction and cleanup within. This fact is more explicit from the official memorandum dated 15-10-2014 circulated by the Registrar (Subordinate Judiciary) of the Hon'ble High Court of Kerala in pursuance of the letter from the then Hon'ble Chief Justice of India dated 03/10/2014.

Coming to the memorandum of the CJI, it refers to the serious concern expressed by the CJI about large number of complaints being received in High Courts against

members of the Subordinate Judiciary. This part of the memorandum gives us some hope. But when we notice the guidelines quoted from the CJI's letter, we would become desperate because the guidelines are apparently intended not to make arrangements for handling the complaints seriously as we would naturally expect, but they are aimed to check even the filing of the complaints and to do away with the filed ones at the entry gate itself without proceeding on them. To save the face and not to face the face seems to be the policy. A perusal of the relevant portions would help unmistakable understanding regarding the purport and import of the letter.

"The Honourable Chief Justice of India has expressed concern about large number of complaints being received in the High Courts against the members of Subordinate Judiciary. In this context, His Lordship has issued the following guidelines to be followed by all the High Courts for the sake of uniformity in procedure while dealing with such complaints viz:

A. *The complaint making allegations against members of the Subordinate Judiciary in the States should not be entertained and no action should be taken thereon, unless it is accompanied by a duly sworn Affidavit and verifiable material to substantiate the allegations made therein.*

B. *If action on such complaint meeting the above requirement is deemed necessary authenticity of the complaint should be duly ascertained and further steps thereon should be taken only after satisfaction of the competent authority designated by The Chief Justice of the High Court.*

C. *If the above requirements are not complied with, the complaint should be filed /lodged without taking any steps thereon. With a view to give vide publicity to the above guidelines, the Honourable the Chief Justice of India has deemed it appropriate to circulate the same to all the Subordinate Courts.*

Hence, all the District Judges, the Chief Judicial Magistrate of the State are directed to circulate the above guidelines to all the Judicial Officers and Bar Associations and exhibit the same in the notice boards in their district for information."

Employing reasonable techniques for filtering out frivolous complaints is genuinely desirable in the case of judges in view of the serious mission they are engaged in and the seclusive living ambience they require in connection with it. But the CJI's guidelines go far beyond the requirement. Lodging complaints complying with the formalities and requirements insisted by the CJI is almost impossibility now. Without a legal expert's aid everything seems impractical. Generally, a lawyer will be the last person to take the 'risk'. The outcome is no complaint.

Turning down people

Is not the litigant public entitled to make complaints against judges, in a democratic setup? How they are able to get verifiable material referred to in clause A of the circular? Often such materials are only to be turned out later during enquiry, if any, ensued. What is the "uniformity in procedure" the Hon'ble CJI intend to achieve by enforcing the guidelines in dealing with the

complaints? What about the 'competent authority' the Hon'ble CJI is referring to for the purpose of clause B of the circular? No answers. And what is the nature of satisfaction that should be entertained by that authority? No answer, again. The wording is indicative only of subjective satisfaction. Are the basic principles generally applicable to such enquiries irrelevant when judges become the delinquents? The circular is eloquent on what it means. Simply, CJI's letter precludes complaints being filed against judges.

So what the Hon'ble CJI is concerned about? Yes, when complaints pour in against judges, the problem is not with the judges but the problem is with the complainants. Complaints are taken for granted as frivolous or baseless. The concern vanishes with the stoppage of complaints. Is this what the judicious and judicial method of dealing with concerns and botherations which go to the very root of the efficacy, efficiency and credibility of the system?

The whole system under democracy is designed essentially to prevent misuse or abuse of power. It also aims to prevent mistakes, faults, slips or errors occurring at the hands of the power wielders and public servants in order to avoid harm or alarm that may be caused to people by such mistakes etc. The next priority with the system is to correct the delinquents and to undo the harm safely in case mistakes are already committed. Taking precautions to prevent recurrence of the same is also part of this priority. Judges are power wielders and public servants. Our jurisprudence does not believe in the infallibility of the judges. Judges are also prone to commit

mistakes and mischief like any other human beings are. And our country witnesses our judges going wrong and corrupted on large scale. Then what is the mechanism for correcting Judges? There is impeachment, though an ever virgin weapon, ultimately for judges in the Constitutional courts, we can say. How the Hon'ble CJI thinks the system will be able to correct the bulk at the grass roots?

Judges complete, foolproof?

One word more on Judiciary's enthusiasm to stop disparaging remarks on the lower Court judges is apposite. Decisions by which the position was crystallized points out that appellate judges are not precluded from proceeding against lower Court judges on the administrative level. It would be interesting if we make an enquiry as to how many appellate judges have shown the fidelity to take action on the administrative level and how many lower Court judges have been booked delinquent thereby. Even an upright judge is denied the opportunity to correct his erring subordinate is the ultimate result. By the way, these are not penned here on a misconception that recording disparaging remarks is a wonderful thing capable of producing wonderful results. The enthusiasm shown by the Judiciary in swirling red flag against such remarks reveals the attitude of the Judiciary towards its members. This is mainly the focus of attention here. Incidentally, do we need to figure out that our judges are so vulnerable that they cannot be deterred from indulging in the practice of 'attacking' their subordinates in the absence of a strict

direction in that regard by the Hon'ble judges of the Apex Court by some judicial pronouncements? And, no remarks, let alone disparaging remarks, seem to be the indication by the pronouncements, why?

If complaints against judges are foreclosed, how the Judiciary will be able to subject the performance of its members to review? Or is it the stand that a review of performance is uncalled for when it comes to judges? The answer seems to be an adamant and arrogant "yes". Subject to no review, subject to no correction, not responsible any way and not answerable any way whatever may the dereliction or misconduct be, and at the same time secure and safe than anybody else. This is the state of affairs prevailing in relation to the members of the Judiciary in our country. There cannot be such a variety of people in a democratic country where all power wielders, without any exception, are answerable or responsible to the people.

The thrown away key

Introspection is the only key to correction and betterment. A person not using that key is blind in every sense. He is cut off from the past, he doesn't learn from the past. So, he cannot move even an inch without harming or injuring others. If we need to make him problem-free and useful enough, either he must be ready to use the key voluntarily or he must be compelled to use it. Immune from review, correction or answerability implies no introspection. Hazardous is the consequence. It's compulsory that Judges and all public servants be

compelled to introspect by going through the process of thorough monitoring and reviewing of their performance.

The view of the Apex Court on the kind of the vibe that it requires the judges of the superior Courts to maintain in their approach towards judges of the judiciary subordinate to them has found its expression in the following words employed by the Hon'ble Court in 2008 (17) SCC 538; "The role of superior courts is like a friend, philosopher and guide of the judiciary subordinate to it. The judicial officers have to be treated with parental care and affection."

The point dealt with by the Hon'ble Court by employing these affective words do not seem to address any serious concern of the Hon'ble Court on any of the broader or bigger issues concerning the administration of justice in a vast country like ours with a huge population. At the same time, can we blame anybody if he/she senses that these words of the Hon'ble Court communicate how judges of the superior Courts expect the subordinate judges reciprocate for the care and affection the former mete out to the latter?

The Hon'ble Court further states; "The superior courts' judges must always bear in mind that no greater damage can be caused to the administration of justice and to the confidence of the people when judges at superior courts express lack of faith either in the ability or integrity of subordinate judges". What if the subordinate judges are actually lacking in their ability and integrity? Covering all these up is the remedy for the sake of keeping up the

confidence of the people in the Judiciary? Is it that the plan is to strengthen the judiciary and people's faith and confidence in it by playing hide-and-seek? What is the greater damage the Hon'ble judges point to as going to happen in case the superior Courts' judges express their concern over the incompetency and corruptibility of subordinate judges? Is it that incompetency and corruptibility are not any serious problems when it comes to the Judiciary?

It may be like this; today's subordinates tomorrow's superiors. The subordinates who need no correction today are definitely fit to be tomorrow's superiors! The Superiors and the subordinates are safe ever in this way, nothing to worry about or nothing to brood over.

Crazy therapy

Chains cannot go mad. And chain for chain therapy is crazy. Passing remarks against a subordinate judge need to be exclusively a matter within the ambit of judicial restraint and discrimination of the superior judge concerned. Those who are not up to that restraint and discrimination need to be proceeded against. That is only what is required in instances where remarks become attacks. It is a shame that the Hon'ble Supreme Court needs to make strenuous judicial deliberations for getting the basic lessons of judicial restraint, discipline and discrimination instilled into the minds of the experienced judges who exercise appellate jurisdiction over the lesser experienced judges subordinated to them. Superior judges need to be 'superior'.

Lawyers' voice unheard

It is highly desirable, and indispensable too, that lawyers should have their say in the screening process and evaluation procedure relating to the appointment and promotion of judges. Actually, more than the lawyers no other is fit for that chore. How their participation can be ensured is a different matter to be worked up. Anyhow, there is no reason for keeping lawyers away from those processes. Keeping them away is highly unwise and improper an approach. But a prerequisite… lawyers should have a voice of their own, a distinct voice of rare ingenuity, fidelity, purity and propriety. The new appointing system sought to be introduced by Government in the place of collegium is assailable for want of representation of lawyers in it. It is serious. Lawyers' responsiveness is the only effective remedy for correcting judges as well as keeping judges within their limits under the Indian system of administration of justice.

Just before becoming a judge the person is a lawyer. So the same feather birds are the best fit persons to say whether the person is fit to be elevated to the seat of a judge. In the matter of promotion of a judge, the opinion of lawyers of the Court centres where the judge had worked earlier must be solicited and weighed. Promotion of judges can never be an automatic process. Needless to mention, it is as serious as the appointment is.

Judicature for judges

Judges are entitled to the immunities, privileges etc. they possess. All these are bestowed on them intentionally and with specific intents and purposes. And this is done only

in the interest of the people... by the people, as we must say it. So, none of the immunities or privileges makes them immune against their delinquencies or misbehaviour in connection with their duty as judges. Privileges or immunities are not license for abusing or misusing power. Rather, immunities and privileges make them more responsible and more answerable than the others. They are even responsible to act attuning to the dignity of their office because it is for people that they hold their dignified office.

Judges are not above the law. They are subject to the law as how I and you are subject to it. In their confrontation with law they do not enjoy any privilege or immunity. Anyhow, they cannot be brought before the ordinary Court. That is a privilege they must have. But there must be a strong alternative forum for dealing with them when they violate the law, either the general law or the law governing their office, occupation and position. We desperately need such a forum.

A mop is really great. We desperately need it because we all believe in cleanliness. A mop needs to realise itself to be great for the reason that without it everything would remain dirty and nasty. Its service is invaluable. But you should keep the mop clean. Otherwise it fails to clean, it starts soiling your precious things.

Discretionary power

Exercising discretionary power is another glaring area which opens up avenue for a judge to be dishonest. Do our judges have the highier degree of integrity, ingenuity

and sense of justice and responsibility required for exercising discretionary powers? What about the expanding horizon of discretionary power and of "dynamic disinterested participation" in the "voyage of discovery of truth" opening up before the judges as a consequence of precedents? Do the spirit behind the precedents "sink into the minds" of judges who are bound to follow them? If not, discretionary power in the hands of incompetent judges would be like a lethal weapon chanced to be in the hands of a child. Casualty on that count is terrific, because it is where the superior collective wisdom of the Parliament/Legislature failed to work on that such judges are directed to take over and fulfil the hollowness thus left behind by the Parliament/ Legislature.

As to discretionary power, what we seem to experience is that the power has become just the powerfulness of the judges for substituting their personal opinion for judicial opinion/decision. It is trite that when the system goes for judges' personal opinion in the matter of dispensing justice, the system is actually setting itself ready for undergoing sabotage of the entire judicial process and administration of justice. Personal opinion cannot be correlated with justice in any manner. We need to revisit the area we have reserved for the discretion of our judges. The point is only that the area need to be narrowed down to the extent it is possible and feasible. It is true that we cannot get rid of the power wholly and we need to agree that ripe judges only are the real remedy. Any power is safe in such hands. Anyhow, Judges cannot be allowed to deform our law in any

manner in the name of exercising discretionary power. They need to learn thoroughly to discriminate between their personal opinion and judicial opinion. They need to understand that personal opinion has no place at all in the judicial process. Judicial restraint is not an empty-headed phraseology as far as judges are concerned. It is not a piece of cake either for them.

Precedents blown in the winds

How many of our judges are fully aware of the role and relevance of precedents in our legal system? Do our judges follow precedents properly or correctly? This is a relevant issue. If judges do not follow precedents, they do not follow the law, because it is the precedents that serve them understand the meaning of the law "when the meaning is not clear" for them by the statutes. Often head-notes prepared by editors of the publications are taken for granted as the ratio. The essential "Similar facts, same law" test often not comes at all into picture. A lawyer citing a precedent must be asked first to state the factual situation in which the ratio was rendered. This practice must be made part of the procedure. If ignoring precedents or misapplying them is an instance of judicial indiscipline, a huge chunk of our judges are guilty on that score. Lawyers are the principal offenders in the guilt need to be stated here. Not applying/misapplying precedents results in miscarriage of justice. Therefore such instances need to be treated as instances of judicial indiscipline and professional misconduct.

Precedents have a real value in our system. The value is ultimately not because they are the last words in our

law. For us the 'last word' itself is relative because the last word is reviewable for us. And that need to be so also without any dilution. Our democracy and Constitutionalism do not permit the Judiciary to take a different view at all on that point on the 'last words'. Parliamentary sovereignty is not a mere ornamental or non-functional phraseology for us, though the same is subject to the Constitution and Judicial Review. "Last words" must be that of the people and not that of anybody else.

Legal dynamism

Ours is not a system that arrests dynamism of law by interpolating precedents in between. Our precedents system actually reflects the dynamism we desired to preserve in our system of law. This dynamism is not possible without original thinking and free thinking. Precedents system actually seeks to achieve dynamism in our legal system by enhancing original and free thinking. But what works is just the opposite, ridiculously.

Precedent system is not meant for halting original thinking from the side of the lawyers or of subordinate judges by imposing views of the Constitutional Courts on them. It is not substituting brains of the Superior judges with those of the subordinate judges or of the lawyers in the adjudicatory process. Subordinate judges are not supposed to act as blind copyists of the rationales of the Superior Courts even when they find that the rationales, if applied, would work out injustice in a particular case on hand. In such situations what they need to do is to

state distinctly and intelligibly why they think the precedents would work out injustice in such cases and then to present their original rationale which drives them deviate from the rationales contained in the precedents. Precedent system gets dynamised in this way, and its tone of rigidity, if any, gets melted also thereby. And justice is always salvaged is the ultimate outcome. Now, who says there is any law which prevents a subordinate judge from entering into the region of interpreting law even when a case which he deals with require such an experiment very much from him, though his interpretation is never a precedent in the eye of law?

Precedential obsession

Anyhow, practically, legal dynamism in the above sense is almost missing now. What now actually happens is that judges and lawyers search for precedents as shortcuts. Original thinking is given a go by. Legs are shaped for the shoes. Statutory provisions and general principles applicable to cases generally are jumped over and bypassed by applying universally the precedents given out in special cases involving particular and peculiar factual situations warranting deviation from general provisions and principles. Thereby the law itself is deformed and it loses the definiteness it ought to have. Precedents have become the law thereby. And precedents have become an obsession with our judges and lawyers. This is a very serious situation.

Without opening statute books, Law Reports are being searched for gathering law. Precedents, which by their nature are oscillating as they take their origin and colour

from individual case situations, are substituted for law, which by its nature possess definiteness and precision as it is coined for general application. Language employed by the lawmakers is disregarded and the impressions expressed by judges on the legal provisions in the context of particular case situations are given undue significance.

Law is the will of the people articulated by the collective wisdom of the Parliament. Precedents are not so articulated. They are only inferences or 'opinions' of individual judges what they think the meaning of law is, i.e. what they think the intention of the Parliament behind making the law might be. These inferences are drawn or opinions are formed by judges only in the context of the peculiar factual matrix of any particular case they deal with. Therefore such inferences or opinions cannot have general application that a provision of law does always have. Only in a subsequent case where the similar factual situation is revealed that a precedent can be applied. Precedents, therefore, cannot be applied without winning the essential test of "same law in similar facts". If we fail to perceive the fine distinctions between law and precedents, the system of precedents would become a real menace. And if we are able to win in perceiving the distinctions, precedents would serve as an essential complement and component in the working of our legal system helping it sustain, grow and develop.

Precedents now serve as shortcuts for judges in decision-making; they need not go for strenuous deliberation. And by the shortcuts lawyers are saved from

learning and conducting their cases thoroughly. There are 'pious' judges who take utmost care to note down citations of precedents no sooner than they are fallen down from the mouth of the lawyers, though these judges won't give their ear diligently to what lawyers submit on their facts. The pertinence given to precedents is either too much or too little. In both instances what is missing is the spirit of dynamism.

Precedents & Parliamentary sovereignty

Too much admiration for precedents side by side this missing dynamism attaches undue significance to Judges' words. This in turn makes judges feel free to go even beyond the 'meaning' and confines of the law in the name of interpreting law. This unfortunately is a mishap the system of precedents has introduced into our system due to our misconception and misemployment of precedents. We cannot forget, our judges are not lawmakers or lawgivers. Our judges are interpreters. They are intention seekers. They cannot go beyond the intention of the legislators. People's representatives only are empowered to make law on behalf of the people. Judges are not representatives of the people. Parliamentary sovereignty is our pattern and principle because Parliament is the body of the people with whom sovereignty ultimately rests.

Nevertheless, instances illustrative of the fact that our judges, in the guise of interpreting law, have gone beyond, even far beyond, the intention of the lawmakers are not rare at all. It is as if Judiciary is on the expedition on exploring what the law ought to be. Intention seeking

often ends up in negating the intention itself. This in effect is taking away the law from the statute books for which Judiciary has no power, unless the law appears to be unconstitutional for them. Rent control legislations are one of the pieces of law that has been made almost ineffective from the point of view of the tenants in this way. The mischief which that law intended to address is no more a mischief now for the Judiciary. Instead, that law is now perpetrating the mischief. It is now an oppressive piece of legislation which enables the landlord to get the tenant evicted whenever he 'states' he 'needs' the premises. He needs only to attach an ornamental word 'bona fide' as suffix or as prefix with the word need. Eviction is that simple, that too without any blots on the landlord for being arbitrary or unconscionable. Courts are very much reluctant to cause desperation to the landlords.

In one case where a tenant who occupies a shop room in a remote village by paying Rs. 650/- as monthly rent was asked to make it Rs. 1150/- per month, the only criteria being that tenant is bound to pay at least 10 percent of his income from the shop room as rent. The tenant had pleaded that he was getting Rs. 300-350 only per day as his earnings from the room, which is the only source of income for maintaining his family. That pleading served as the crucial fact and as the ratio for the decision. Of course, the order enhancing the rent was accompanied by another order for eviction of that man from the premises. The fact he is a disabled person whose disability proved to be 40% is not a fact that 'deserves' judicial 'consideration'.

Going against, or deviating from, the intention of the legislature in enacting a piece of law would amount to violation of that law, which nobody, much less the Judiciary, is permitted to do lightly. And when judges go beyond the intention of the legislators, they invent 'new' principles to take the place of the relevant law for deciding cases. In effect those principles become the law. Judges this way bypass the intention of the legislature and make law circuitously without jurisdiction to do so. Is this not encroaching upon the powers of the legislature by the Judiciary? Are all these not disobeying or violating the law of the land, or for that matter the Indian Constitution itself, by the judges? Things... responsible guardians never expected to indulge in.

Judicial incompetency catastrophic

No doubt we have good judges, wonderful judges, all over the hierarchy, and their presence in the system is producing wonderful results also. It is truly our good fortune that we have such good and wonderful judges who work excellently against all the odd backdrops and challenges in their way. But that class of good and wonderful judges does not compose the majority is also a fact, say the most despairing fact. Since we need to take in the overall performance and output of the whole system when we subject the system for evaluation, we cannot remain satisfied with the advantage we enjoy by the work of the meritable minority, especially when the overall output the system is able to produce is too shabby and despairing. The seriousness of the office of a judge is such that we cannot afford even one incompetent judge,

much less an unfit judge, if we have got true and due regard for the life, liberty and property of our people. Even the issue of reservation, on whatever ground, is no doubt a point of serious anxiety when it comes to appointment of judges. A revisit on our reservation policy seems to be absolutely essential in the case of judicial appointments. Now, what is stated above regarding competency etc. is equally relevant in the case of lawyers also.

Though we have recognised justice as the most valuable virtue which serves as the vital force in the maintenance of a democratic polity, apparently we do not take adequate care, show real concern or pay proper attention to when it comes to administering justice to the people practically. We are not pure in our intentions. We pretentiously do something for the sake of doing something. That is why we only comply with the formality of appointing judges, but paying no attention to the quality of the appointed to perform the function of a judge effectively.

Suffering the incompetent

Once judges are appointed, people have no choice but to submit their justice-related predicaments to the jurisdiction of those judges irrespective of their incapacity or incompetence. It is really precarious a situation. This must be the most serious consideration while appointing judges. The competency, integrity and incorruptibility of lawyers are also on the same footing as that of the judges, no compromise and no dilution. The only

relaxing thing here is that the litigants have option to select lawyers or change the hands if they are found not adept or found corrupt any way.

People upright

People entertain a belief that judges' function is a divine function. That belief seems to be the foundation of their reverence and respect for their judges. Judges should try hard to maintain the same by rising up to the expectation of the people as the reverence and respect is conducive for the overall smooth working of the system. And the reverence and respect generates a serene atmosphere for the judges to work in. At the same time this respect and reverence should not be mistaken as fear. Those are the attributes of a dynamic people guided and motivated by a rich culture and its civilization.

People law abiding

We know, in civil jurisprudence Courts do no not have compulsory jurisdiction over disputes unless and until people voluntarily submit their disputes to the jurisdiction of the Courts. At the same time that submission of disputes to the jurisdiction of the Courts is the basic component behind the making and maintenance of a peaceful and orderly society, a law abiding society. Even when the system is in the worst form our people approach Courts voluntarily. Ironically, that's what 'enables' the Judiciary to cry over the backlog crisis, though, definitely, it is not the 'reason' for the backlog.

Building confidence Judiciary's assignment

Now, it is the faith and confidence of the people in the judiciary that actuate people to submit their disputes voluntarily to the jurisdiction of the Courts. If judiciary fails to inspire faith and confidence of the people, people would start fighting on the roads in the name of their causes. There lies the actual relevance and significance of the faith and confidence of the people in their Justice Delivery System. Who else is capable of building that faith and confidence, if not Judiciary itself? So it is the primary duty of the Judiciary itself to act and conduct itself in such a manner that it succeeds in generating faith and confidence, definitely not fear, in the minds of the people towards the Courts. Fear, veneration, or even awe is alien to democracy. The plain reason is judicial power emanates there from the people, not from any Kings or Gods. Courts are not places of worship, nor judges idols there. Courts no more "hallowed places".

Off Contempt

What is supreme in democracy is nothing but the general will of the people. Every authority in democracy is under the supremacy of that predominating and reigning will. Without any exception or privilege judiciary too is obligated to function and operate under the very same predominating and reigning will of the people. Every authority in democracy is originated from and coined by people themselves for the purpose of achieving their own safety, security, welfare and wellbeing. So people alone is the ultimate authority having the undefeatable right invested with the original authority as we well as the duty

and responsibility to check, keep within limits, correct and mend every authority in democracy.

People, the supreme corrective

Again, when a democratic authority like judiciary goes wrong or fails to protect the interest of the people, then the ultimate and all-powerful hands to harness that authority is people themselves. Correcting, mending or bringing back that authority to track by people is the real democratic process. It is when people engage themselves in that bringing-back-to-track process that democracy becomes a true-life democracy, a participatory democracy in a pragmatic sense as far as our democracy with a huge population is concerned. If democracy does not occur in that way, it's only a dysfunctional or utopian democracy.

The acid test

Therefore anything invading over or meddling with that unquestionable and indefeasible right of the people to fix on track any authorities under democracy is invalid for all purposes and therefore it must find its end forthwith. So the acid test to decide the validity of our Contempt Law is to check whether it tends to meddle anyway with the supreme authority as well as the primary duty of the people to set right the Judiciary whenever it deviates from its assigned duty. So Contempt Law to the extent that it affects the fundamental authority and obligation of the people to correct the Judiciary when it fails is black law, just because it tends to establish the dominance of the Judiciary over the people. Then the law

is undemocratic, illegal and unconstitutional in that sense and therefore the same is liable to be thrown away.

Reform, not retaliation

We support keeping two groups in confinement, criminals and lunatics. "Criminals are made criminals" is not mere hocus-pocus of the criminologists. Criminals are social by-products. Further, if a criminal is born criminal, how can he be blamed for his "evil gene"? It is like what venom for a snake. The venom is not snake's mistake. You are supposed to keep yourself away from the snake. You want to kill it to save yourself is a different thing, an unfortunate thing; may be an ineluctable destiny in store for you and the snake. Anyhow, if "eye-for-eye, tooth-for-tooth" penalty is barbaric, how is it not so in the case of "Killing for killing"? The topic deserves a hot debate.

Anybody clean of criminal mindset?

The intention to carry out a criminal act (mens rea) + Accomplishing the intention by doing the physical acts that would make up a crime (actus reus) = Commission of a crime; the first one denotes the criminal mind or the mentality to commit crimes and the second one denotes the willingness and the 'ability' to translate the mentality into reality. Then, is it not that those who accomplish the physical acts of crime attended with the criminal mindset to commit it only are caught as criminals and that all those who possess the criminal mindset alone are allowed to go free? Can we legitimately estimate that the number of those who harbour or carry with them the mental element of crime are massively lesser than those who we call as

criminals on the basis of the only differentiating fact that the latter fulfilled the physical part also of a crime? Is not having the mentality to commit crimes condemnable or vicious at all, though not punishable? Frankly, how many of us are free from this ignoble mindset infected with criminality?

Social spin-offs

Here, it seems we need to analyse a little more on the complicity of society in the criminality prevalent in it. If there is any truth in the fact that criminals are social by-products, then they are victims or prey of social life which we enjoy. Though not exactly the same, it is like faeces is produced in our body as a spin-off of digestion of food we taste that criminality is generated in society. We believe that we should inculcate good morals, habits and qualities in our children if we want to make them good citizens and good human beings as well. Our this stand discloses that we know that a child who is not brought up in the above fashion is likely to grow up as a social misfit.

Now, for example, if our parents fail in bringing up their children in the desirable manner, can the children alone be blamed for their wrongdoings without any word against the parents? No, actually. So also we need to remember that just like the role parents have in bringing up their children, every social situation or circumstances that bear the potential to influence the children in some way or the other also play their role in shaping the character, either good or bad, of the children. Naturally, they grow up as good citizens or bad citizens

respectively. Viewed from this angle, is it not society itself behind producing citizens good or bad? How the society is expected to handle criminals, then?

Now, the 'bad' citizens are all potential criminals. They are actually ready with the same mindset fit for committing crimes. Their 'turn' has not reached them is the difference between them and the actual criminals who when their chance fell upon them supplemented their criminal mindset with some physical acts to ripen the mindset into crimes. Potential criminals are more dangerous than the actual criminals because potential criminals are there always around you and 'in you' too, in disguise. They may pounce down upon you any time out of the blue. It is common sense that prevention is better than cure. But what are we doing? Getting shocked when crimes occur and we start to react then, rather emotionally, often with a retaliative mind forgetting society's complicity completely.

Society, the master abettor

Whatever, it turns out that ultimately society has accountability for the phenomenon of criminality prevalent within it. Therefore if society has 'helped' in shaping a criminal, it is equal to society abetting him in his criminal acts. Is it not our law that abettors are liable for punishment along with the abetted? Anyhow, the abettors are absolutely safe in our days and they are free to cast stones on the 'Loose Woman' without any regret is their privilege and superiority, too. Sure, they would cast their first stones on the Christ himself if he ventures to teach his Gospels today in the way he tried at his times.

Here, we must open our eyes to the naked fact that the number of actual criminals is manyfold lesser than the potential criminals staying free in society. Then, what is the moral right for society for claiming to brutalise the 'actual' criminals without any plan for addressing the issue of potential criminals? When you accuse another person, you are knowingly or unknowingly inducing a hypnotic suggestion to yourself and to society that you are free from all sins and imperfections while you are not so free truly. It is your egoistic plan to purge yourself from your complicity and to make the impeached ones alone scapegoat of.

Retaliation a virtue?

Though unconditional forgiving is one of the highest virtues known befitting to human beings, it is only rarely we see such ones, Jesus kind of persons, among the species. We are 'mortal' beings is the explanation we have for our unforgiving state of mind when we or our relations are subjected to bodily inflictions by others. Yes, we are mortal human beings and therefore we 'may be' retributive or revengeful. Therefore, your tendency to be retaliative does not seem generally considered as inhuman or wild, though you cannot commit any crime in the name of your retaliation. Briefly, the urge to retaliate has, rightly or wrongly, been noticed as an emotion that deserves some sort of satiation. And, as we view these things here through the legal goggles only, the morality of the trait of being retaliative is beyond our scope here.

Emotional justice

Anyway, the above urge of the close relations of, or of those who are emotionally attached to, the victim of a crime to see that the culprit gets maximum punishment or even to see that he is brutalised is to a great extent conceivable in view of the above 'human' emotion of vengefulness. Viewed in this backdrop, it is more or less civil only if society expresses its conjunction with the pain and as well as with the emotion of vengefulness of the relations and of the emotionally attached ones. However, when society tends to identify itself with the said pain and emotion and start to cry as the relations and the others cry, actually the society is nudging extra-legal and extra-judicial elements or considerations, which might stultify the legal process, into the minds and brains of judges and others dealing with the case. This is an unwelcoming situation that seems to be adversely affecting dispensation of justice in the proper way and with the desirable-only output.

Media justice

It is to be seen that this is one of the areas where media, knowingly or unknowingly, plays its negative role and indirectly intermeddles with the administration of justice by giving undue publicity to the emotional content involved in certain incidents of crimes. They play the prime role in sensationalising such emotive issues. Impelled by the sensation so created, we see judges 'struggling' to justify even pre-trial detention of persons who are accusatively pointed as culprits. Judges do so even in those incidents where they know that they are

not legally justified in detaining such persons. The prejudice which starts at the bail stage in this manner continues to influence them until they pronounce sentences. Therefore, media persons cannot wriggle out from their obligation to maintain thorough self-restraint and a sharp sense of discrimination while they deal with emotionally sensitive issues. If they are not showing the prudence to adopt such self-restraint and sense of discrimination, then, for saving the administration of justice from being stultified as noted above, the system will have to turn to the last resort of making law for harnessing the media. Law should be the last resort only as far as media is concerned because freedom of the Fourth Estate is the freedom of the people.

Immune judges

Now, how a judge should respond to such 'sensations'? It is only by remembering their duty to maintain a perfect balance of mind which is invulnerable to be affected by any such emotions that a judge would be able to win over the situation that may be created by the sensations. And only in this way that our judges will be able to ensure that their judgements do not lose their essential hallmark of objectivity anyway. Further, judges need to remember that considerations that must weigh with the State while dealing with criminals cannot be the same as the emotional components that stir some individuals on account of their emotional breakdown caused by particular incidents of crimes. It is also to be noted that our system is deplorably inefficient in dealing with crimes and criminals and this is the main factor that builds

occasion for such emotional arousal. If crime detection and trial of criminals are done effectively, in time and as of course, there won't be any room for sensation or sensationalising of particular incidents of crimes.

Law of the people

What must be the purpose behind imposing any kind of punishment on the criminals once they are found guilty? We need to answer the question only in the context of our democracy, because in democracy administration of criminal justice is the mechanism that is devised by the people themselves for their own self-regulation and self-correction with the ultimate objective to grow into a tranquil Nation and society sustaining on democracy. Therefore law in democracy cannot be allowed to be used as a means for brutalising criminals or for avenging on them. The role that law play in all other forms of government, where law is basically only a means of oppression, is insignificant as far as the role that law play in a democracy. Law by the ruler and law devised by the people serve two incompatible purposes. By beheading our brave men and parading their heads in front of the people, the aliens as well our own kings or monarchs have taught us what law means to them. We have nothing to achieve by following their suit in our democracy any more either by brutalising or by killing any of our citizens, members of our big family, our Nation.

Sentimental democracy

Democracy is not something that is supposed to sustain barely on the emotions of the people. It is not a setup for satiating just any sentiments of the people. Strong

emotions may eventually mature into strong public opinion and then into a piece of law. Until then emotions or sentiments of the people cannot be allowed to infiltrate into the working or framework of democratic machinery, especially that of the Judiciary. Once the sentiments become law, the sentiments are no more sentiments and so it won't harm democracy. By the way, emotions of the people are not to be suppressed. Those emotions must be handled without causing any damage either to the democratic framework of the Nation or to the life, liberty, any other rights or even the morale of the people carrying the emotions. As stated above, if the system is able to detect crimes as soon as they occur as well as to try the offenders and punish them without any unwarranted delay, there won't be any emotional arousal on the occurrence of particular incidents of crimes.

Crime and love

No doubt, we must be good and civilised enough to share the pain and pangs of the unfortunate mothers of Nirbhayas and Jishas. At the same time we must be able to read the silent cry of any unfortunate mother whose own son committed the same atrocities on the that mother's own daughter. Actually, she has lost her daughter, and she has 'lost' her son also. For whom she would be crying, for the lost daughter or for the 'lost' son? She cannot but cry for both, but she would be trying to salvage his son because she cannot lose both at the same moment, though she won't cry for such a son if he is son of another mother. Even our mothers fail to represent unconditional love. Anyhow, we cannot, and our law

cannot, relieve the mother from her pains by saving her son howsoever is her pain. We need to prevent crimes, we need to book the criminals and we need to punish them exemplarily, no doubt, so far as we follow our present penal policy. But, how would then the system relieve the mother from her pain, if not by trying to reform and reclaim her son?

Socialising solution

What is the actual problem we face in the area of crime management? We found that criminal mindset is not the disadvantage of the so-called criminals alone. We also found that the figure of potential criminals having the same criminal mindset will be many times more than the actual criminals. Then, is not that mindset to commit crimes the real threat that needs to be addressed? The query calls for a social debate. What is to be refined is the mindset that ultimately prepares a person for committing crimes, a mindset that doesn't confine to 'criminals' alone. Addressing the willingness and ability of a person to actually commit a crime alone won't be enough anyway in curbing crimes. Why don't we have a relook into this critical area of our social life from the standpoint of socialisation and democratisation of our people, i.e. by an effort to refine people generally by inculcating in them democratic values and principles?

Reprogramming minds

A few words on the nuances of reforming individuals seem to be relevant at this point. You were gifted with an old computer. It had been whimsically used by many persons before it came into your hands, but it is working.

However, its Hard Disk is overstuffed with old data and programmes by the prior lay users. Naturally, whenever you switch on the device, those old programmes, defaults, data etc. only get loaded into its Memory. Adding to the injury, the system is infected with virus also. There is altogether a confusing jumble of things even on booting. Need not be mentioned, you are unable to make use of the system without putting you to the risk of receiving fallacious and erroneous output out of any data you may feed into the system for processing. Therefore, ultimately, you cannot make use of the system at all without reprogramming it is the problem you are faced with. Now, here the devise is none other than you. Its Hard Disk is your subconscious mind and its Random Access Memory is your conscious mind. Reforming a person actually involves the same reprogramming. It is like the old computer that our mind has been programmed, unknowingly and without our conscious permission. Our mind essentially needs reprogramming at least from the socio-psychological point of view. This is what experts in the relevant fields ask the world to do. They say our mind is only a tool just like our hands and legs are. Meaning 'you' is not 'your' mind…

Brutality and the Constitution

Now, what turns up from what we have discussed so far is that reforming and reclaiming criminals is the desirable course. This doesn't mean mistaking prevention of crimes for handling criminals. Criminality is aberration. Being retributive or being vengeful is also. We cannot be a mob torturing or brutalising or killing criminals. There need to be a sensible contrast or line of distinction between

criminality and non-criminality in view of what we have discussed above regarding the mindset that prepares people for committing crimes.

Why policing is manifested as manhandling and terribility before us? Because we secretly believe criminals are to be brutalised. We secretly support pre-trial ordeals and convictions. Our judges also seem to be finding some meaning or 'useful' purposes in such ordeals and convictions. Therefore, among other things, bail considerations have been taken a somersault. Now there is no such presumption as of innocence. Denial to bail, irrespective of the offence involved, has become the rule and granting bail exception. The criteria for granting bail have changed. Position of law has no relevance. Bail is left almost absolutely to the personal volition of the judges. Article 21 is almost a dead letter with many of our judges and they don't know that people have nothing more precious to lose in this country than what that Article guarantees to the people. Fundamental rights are no more rights 'fundamental'. They have become just a few among so many other rights that are easily violated.

Naturally, our fundamentally wrong views and attitudes as noted above get reflected and manifested through police brutalities etc. in our public life. Section 323 IPC is Section 323 IPC whoever commits it and whoever the victim is. Police is also not exempted from penal consequences if they commit that offence. Nevertheless, generally everybody secretly entertain that police should employ force while handling criminals. Even violence by police is not bad if it is committed

against criminals is our attitude. There is our silent permission for the police to do atrocities against criminals. It is as if we all believe that without employing force policing is not possible. We believe that questioning is extorting answers. We are misusing police and misemploying police powers. Police need to be 'reformed' and 'reclaimed' by imparting to them the essential lesson that policing is not muscle power or inhumanity, but it is brain power and humanity. There are many instances before us where police has proved what the right way is for them by employing their brain power marvellously instead of muscle power brutally. Police are not to be paid whippers or oppressors. Oppression is the antithesis of democracy. All those who believe in oppression are enemies of democracy.

Reformation by Hanging?

We started with Contempt Law. We are coming back to it after some relevant deviations. Now, as we know, penal law endeavours deterring people from committing crimes at the threat of impending punishment. Simply, it exploits the fear response of human beings. No doubt, the technique, since no foolproof alternative is available, sounds working, though not most satisfactorily, in the management of crimes and criminal behaviour. At the same time our jurisprudence does not seem to back up retributive punishment much. It leans more in favour of reforming criminals, at least in theory. And having regard to our high esteem for human rights and human values, the ideal situation that we can aspire for is also where the offender is reformed and reclaimed as a 'normal' law-

abiding person. Execution negates and nullifies reformatory approach, because, if you entertain that a criminal is one who is liable even to be killed, then it is quite natural that you won't find any fault in brutalising him also. And therefore you would simply toss away the theory of reformation scornfully.

The bitter pill

So far as the Judiciary remains as shadowy and blemished as it is now, criticising or even assailing it to some extent is to be treated as a legitimate act in exercise of the supreme authority and in discharge of the primary duty of the democratic people to put on track the Judiciary. Then, what is the offensive element which makes contempt a crime and what is the reformation needed for a person charged with Contempt? How a contemptuous word or act becomes an offense entailing corporeal punishment, especially when the word or act is in criticism of the Judiciary? Criticism is the pill for democracy's ailments, though the pill may be bitter to the unruly among the power wielders. So criticism cannot be a crime in democracy. It is the ideal cure there.

One word or one act of a single person, or a few words or acts of a few persons, are not words or acts in isolation. Those are words or acts that represent and resonate public opinion, the real voice of the people in a democracy, the voice which cannot be silenced by penalising it. Is there any person who spoke or acted contemptuously in isolation been proceeded against for contempt in India? If not, it definitely sounds that contempt law is a weapon

that has been misemployed only to silence the voice of the people against...

Inciting revolt

We have seen people rising up against prisons when prisons are misused as camps for torturing innocent people instead of using the prisons for keeping convicted criminals. We cannot blame people if they start to hate Courts also when Courts are misused as centres for enforcing anti-people laws. Courts cannot be a nightmare for people. For them Courts must symbolise temples of justice, their rescue centres. All anti-people laws, if there are any, must go. All laws made for dealing with any emergent or exceptional circumstances must be struck off from the statute book as soon as their purpose is over. Repealing an unwanted law is as important as making a most wanted law. All these must be done for preventing misuse of law. Misuse of law may prove worse or riskier than lawlessness. It is the duty of the Judiciary to keep people safe from unconstitutional and anti-people laws. Do we desperately need the law that we vigorously retained even by crushing the iron will of Manipur's Irom Sharmila, the iconic activist who went on without food for 16 years of her youth demanding recall of that law?

Fascism

Law for commanding or enforcing respect, veneration, or awe is redundant and junk in a democratic polity. Servants commanding their masters to respect the servants is really an anomalous situation. After all, respect is not something that queues up on command. Our people are humble enough. Respect, if at all is it significant, would

spring up spontaneously from their minds when anybody disposes himself/herself in the fashion that he/she deserves it. Institutionalising respect is fascism. Attempt to enforce respect rather generates disrespect and resentment. Respect or faith cannot be snatched from people; it should be solicited from people by better performance and better service.

What is the makeup or composition of a person who asks others to respect him? From the psychoanalysis point of view he suffers from some aberration of the mind. "Sticks and stones may break my bones, but words can never hurt me", goes the adage. We need normal, grownup and balanced personalities only to be our judges. Our judges are no more Law Lords of England. They are to be self-effacing men of our soil sitting in judgement of our peoples' true-life predicaments. While people need to have regard and respect for their judges whose number is limited, judges need to have regard and respect for the whole citizens of our country. This mutual regard and respect is the root of the vibe that needs to be developed between the Judiciary and the people.

Contempt is disobedience

Being exception to all what is stated above regarding contempt, disobedience must be addressed more strongly than it is now addressed. Contempt actually consists in disobedience of decrees and orders of Courts. There is nothing more contemptuous than that. Infantile and immature mannerisms need not be made a subject of judicial debate. Those trifles and trivialities need not occupy the minds and heads of our judges. Their precious

time need not be wasted on those little and belittling chores. There is no time also in view of the gigantic backlog figure staring at them, and of docket explosion as well. If Judiciary is able to prove itself, no contempt would be enough to bring down the faith and confidence the Judiciary sowed in people's minds. In that situation people would single out the Contemnors because contemnors are then the enemies of the people.

Let's come to disobedience. There are very many landmark popular judgements contemptuously neglected by governments. Judgements on people-judge ratio are among such ones, the relevance of which we have already discussed. Why the Judiciary is so indifferent, inert and neutral in such instances of open contemptuous neglect while it shows undue positivity and activism on words or acts of certain individuals appearing to it to be contemptuous? The disobeyed judgements, had they been obeyed by governments, would have changed the face of India to some extent at least.

Judicial Activism

Powers and functions of the Judiciary have been outlined by the Constitution. It is enough and sufficient if Judiciary performs effectively and dutifully within the boundaries of that outline, and by doing so it shows its loyalty and allegiance to the Constitution and to the people. It is a scene where we find our judges discharge their duty 'optimally' by doing whatever they are able to do for the benefit of the people acting within their boundaries. If this optimum level of action is what we call judicial activism, it is judicial activism in the proper sense and it

will promote and enrich democracy. We cannot proceed from here to the next point without making the remark that the performance of our Judiciary on that line is very much desperate. Now the point is, when Judiciary starts to perform by transgressing its limits and against the spirit of separation of powers embodied in the Constitution, such performance cannot be called judicial activism. That kind of activism is not going to promote democracy, rather it's against it. And it's against the Constitution.

Any one of the organs of power becoming proactive and stronger than the other ones is not at all a good signal. All the three organs must function properly and effectively within their respective spheres on the basis of checks and balance mechanism. Only this way democracy is going to sustain and grow. People finding solace when at least any one limb of the machinery becoming active or more active, cannot be a rationale for promoting and encouraging overgrowth of that one limb. Such a growth is cancerous. By running within the runway itself our Judiciary, if it decides, is able to torque revolutionising the entire system causing our democracy thriving. Viewed from these points, as far as our democracy is concerned 'judicial activism' is only a misnomer. By the way, some judges are good or proactive is also not going to be any solace for us. We want the whole Judiciary 'active' and efficient to the optimum.

As stated above, our Judiciary is powerful enough to revolutionise the country by working within its expanse itself. Did anyone or anything in our country prevent our

Judiciary from being active or proactive within the expanse? It could have done very many great things for the country. Only a few great Judges made notable attempts in that direction and fetched some fruits that are remarkable. This they did because they were nearer to the people and they shared the aspirations of the people. They could perceive the immutable "basic structure" of the Constitution because they read the Constitution from people's standpoint and wanted to answer what would be the fate of the people if the "basic structure" is disrupted. A postcard was enough for such judges to reach out to the people. As stated, this was the case with a few judges only. The bulk remained far away from the people and they cried for 'activism'. For them 'the postcards' are mean and intrigues. Thanks to them, PIL is almost a dead letter now. These judges are admirers of the litigations of the creamy, the corporate and of the white-collars.

Unaccountability, a blessing or curse?

A never-movable seat of authority is not something going along with the principles of democracy. However, exception is also a rule. But exception cannot be the extreme opposite of the general; rather the exception should complement the general. Some amount of relax on accountability accorded and a minimum amount of avenue for unquestionability permitted and a comparatively stronger security of tenure provided for by the Constitution in the case of Judiciary are only in the interest of the polity and the people. But these indispensable minimum relaxes cannot be allowed to be

grown and transformed into the absolutism of the judiciary. If such a transformation is not guarded against that will be the beginning of the end of democracy because the transformation ultimately will take away from democracy its very distinctive feature, viz. the representative character behind every sovereign action in the governance of a polity sustaining under that ideology. We note, the very thing that is absent in the actions of an absolutist authority is the very same representativeness.

The degree of restraint, responsibility and commitment expected of an authority with such Constitutional privileges as the Judiciary in India assumes, is far higher and greater than that is expected of the other power centres under the Constitution. The privileges are strategically bestowed for the stability and sustenance of the whole system, working on the flywheel of checks and balance mechanism. Therefore the judiciary must see to it that it never transgresses or it never outgoes the limits set to it by the Constitution, the duty is inherent in it. Judiciary is like a lioness in charge of a kitten assigned with the duty to rear the kitten up with all the caring of its mother cat.

Even while saluting our great judges who have ever stood in guard in saving the system from being absolutistic, we cannot help ignoring the serious criticism strongly voiced against the judiciary for its not-answerable and nothing-to-fear-attitude and for its tendency for remaining blind and unmindful of the degeneration and decay within. Judiciary must be able

to clean up its own contours and corridors before it can take people into confidence. There must be a strong mechanism within specially devised for the purpose, taking in its sweep the superior most and the last in the rank.

Those sow in only reap. There is no meaning in uttering thousand times "faith and confidence of the people in judiciary" if people has actually lost the faith and confidence in it. Judiciary is the cleansing mechanism in the body polity. If that organ malfunctions the entire body gets polluted and if that organ functions properly that will set the entire body aright. Again, if the judiciary fails to position it in the proper place, all the other exercises would be without any yield. So we may tick-mark the top most in the priority list and hope for the best out of it.

Last but the most important

People or the citizens are the titleholders of power in democracy. People entrust the power with a few among them for wielding the same in accordance with the wishes and dreams of the people. Hence, it is the 'key duty' of the people themselves to be on guard on their trustees to ensure that the latter do not violate or abuse the trust. If people fail in this respect nothing can save them. The truth is that a people who is educated and enlightened of their rights and duties won't fail never in the key duty. People would prove knowledge is power.

So educating and enlightening the people of the laws by which their rights or duties are destined to be

governed, by which their remedies are shaped and by which all these are processed and rendered practical is the first key for change. Without opening the exterior door we cannot open the interior ones. So, let us use the first key and open the door to a revolution of change which is definitely going to improve the life of the common man, the downtrodden and the unfortunate lot of our great country. And, again, let us kick-start with the Judiciary with those essential and ultimate ends in our minds.

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CHAPTER - 3

Limits of law

Limits of law

While we speak proudly and clamorously about the efficacy of law, about timely justice and all, we also need to be aware of the shortcomings or pitfalls of law in order to keep us balanced and unerring in our usage of, or our experiments with, law. It is a matter of getting to know the pros and cons of the law as a means for welfare and wellbeing.

Changing the mindset

Whether law is powerful enough to change the mindset altogether is a difficult question to be answered. But no argument, law is able enough to 'influence' the mindset, influence the mindset by regulating the conduct or behaviour of the mind so that one man's conduct is not in conflict with another's, at least in their outward manifestations.

Law not all-in-one solution

However, as noted above, whatever be our claims regarding the capabilities of law, we need not become

victims either of our own overestimation or underestimation of it. It is indubitable that law is not a panacea for all the problems human society faces either within a Nation or outside of it. Each and every area of human life, particularly affairs or matters that are purely individual, need not be brought under the dominion of law or under political dominion. Everything in life need not be institutionalised. Why should we? Institutionalisation is needed only where that is necessary or desirable in the common interests. By institutionalising a new area of our life we are just introducing the necessary evil of machinelike inefficiency or 'efficiency' into that area, as well as opening doors of that area of ours to power hungers and oppressors.

Democracy's fineness is that it opens the doors of freedom to the people wherever it is possible. And democratic people are freedom lovers and they like to be free to the extent feasible and desirable. They love democracy because they love their freedom. They love their freedom because they love their life and existence. They are in search of self-fulfilment, the highest stage of the blooming of their being. They know this is not possible without freedom. Anyhow, their most respectable superiority is that they are always ready and willing to sacrifice their freedom to any extent if the same is necessary for their common good. This superior quality of the people cannot be misused or overused. Every new institution is actually a new body of law. Now, overdependence on law cannot be the right approach is the point that is attempted to be emphasised here. Picking up law as the sole and ultimate remedy or solution for

any and every problem we might face in our life may end us up in troubles and pains.

Law has its own limits must be accepted if want to be realistic in our endeavours with the aid of law. Proper awareness and understanding of the "limits of law" is necessary for moulding a matured approach in the matter of application of law for practical purposes. This helps us avoid harmful effects of law. Law is the means and not the end. It is the tool of man. Not man its tool. Law has no interests other than man's interests. Also, law is often double-edged. We need to be realistic.

'Populist' laws hidden dangers

However, we miss the above realism in our dealings with law. It is our habit to turn to law at every point of twists and turns without debating on the propriety of that approach. The prevailing trend of introducing new and newer laws for dealing with each and every issue that catches public attention stirring public opinion up as if a new law is going to solve the issue straightaway is only a populist policy. It is only a gimmick to save the face by pacifying or rather neutralising public opinion in a treacherous and clandestine manner. They are often part of the politics of sops, sops in addition to the minority/ majority sops, sops for the Backwards, gender sops etc. etc.

There are several such populist laws. Many of them left at the cradle itself and many of them left halfway, exposing the impure motive behind their enactment. They are passed so over hastily that they often carry with them,

and introduce into the polity, consequences that are grave in nature. It is often that such consequences are deliberately stuck in or introduced into such laws. They unnoticeably barge in and make inroads even into the highly fortified and inviolable personal and other constitutional rights. Detention parameters, fair trial principles, rights of accused etc. are all severely impaired and vitiated already this way. Unfortunately the Judiciary also has made it a point to show green signal to these trends that are against the spirit of Rule of Law, constitutionalism and human rights. For these reasons such laws are potentially dangerous, especially when they are misused. The danger is perilously imminent and conspicuous in view of the fact that misuse of law is today's order. There is nothing devilish and dangerous than misuse of law. And this is the perennial problem that man has ever been battling against. Still he is destined to...

Soulless Constitution

We have never been successful in implementing even any one of the many important laws in the true sense of implementing a law. So also, implementing Constitutional mandates remain an everlasting dream. We have somehow managed to set up almost all the institutional framework provided for by the Constitution for our polity. But we have miserably failed in instilling constitutionalism into any of these institutions.

Constitutionalism remains far away from the hearts and brains manning these institutions. Since the institutions provide whatever these hearts and brains need for them

in their life... power for power, money for money, all conveniences for all conveniences..., they are interested only in preserving the skeletal structures of these institutions for their own sake without constitutionalism not posing a headache for them. It is this conglomeration of skeletal institutions that we now call as democracy and constitutionalism. We have not moved forward even an inch in constitutionalising our system. People have to go a long way if they want to change this precarious situation. But they need to undertake the challenge because Constitution and Constitutionalism are meant for them and not for the parasites.

Virgin operated on for Infertility

It is unwise to make alteration to a device even before putting it to trial run on the lines of the particular purpose for which it is designed. Keeping Constitutionalism far away from us and thus without even getting chance to experience the outcomes or upshots that the actual working of the original Constitution may bring about in our life, we ventured to make several amendments to the Constitution. The primary question is how many or how much of the amendments were necessitated for the purpose of protecting the interests of the people, or for getting over the riddles the original Constitution posed in the way of making people's life better in ways prescribed by the Constitution.

What are the interests, facts, undercurrents etc. that acted as catalysts in the exercise of amending the Constitution? Our politicians even went to the extent of claiming power to undo the Constitution by rewriting it

in the way they liked it. The Nation had to struggle for preserving its Constitution for its people. Our Judiciary played its historic role then by expounding and holding up "basic structure" theory for saving the Constitution. Great and eminent lawyers played their historic role in enlightening the great and conscientious Judges who pronounced the historic and landmark judgements on that facet. What were the politicians exerting to prove? Were they showcasing their heartfelt conviction that without unbridled power to remake the Constitution they were helpless to prove their commitment to the people? Most of the amendments seem to be tailor-made for serving vested interests of the power wielders or of their politics.

Just like what we have been doing with the Constitution, we are either making repairs to other basic laws also or introducing newer laws on the same subject on various pretexts without waiting or caring to see how, or what, would be the real state of things if we make attempt towards implementing the basic or the original laws. We are never particular in implementing laws the implementation of which would directly transform the lives of the people. Rather it seems we are very particular in not implementing such laws.

Democratising people, State duty

In a democratic polity instances of lawbreaking are to be generally on the lower side because the mindset of democratic people is such that it is vigilant against all instances of lawbreaking. This is the morale and moral strength the people in a democracy essentially need to

possess. But this morale and moral strength do not always get rooted in their minds on a fine morning. These qualities cannot be rooted out also in a moment if people possess those qualities with them. Inculcating those qualities in the people and to preserve and strengthen the amount of the qualities already available with the people are the essential operations to be undertaken by the State in a democracy on a large scale.

Democracy not readymade

Democracy involves socialising people or preparing people for democratic way of living. Democracy is not born on a moment. It is evolving. It is neither achieved by changing the form or machinery of government of a Nation nor by achieving independence from the dominion of foreign rulers. These conspicuous facts are enough to give us the insight into the comprehensiveness and the seriousness of the duties and responsibilities the State owe to the people. What is the reason for our country becoming more and more notorious for our people's corruptibility and for their disregard for law? Proper diagnosis takes us halfway to the healing.

Civilising people by instilling in them the mentality to be law abiding is the essential prerequisite for making people prepared for living in conformity with democratic principles and values. Busy with "State affairs" we never paid attention to this crucial aspect in the building up of a democracy from its germinating stage. And without carrying out this basic task of civilising people, we curse people for their criminality and blame them for their insensitivity. We cry for hanging the criminals, castrating

them, brutalising them... expecting that those measures would repress the criminality in our people and make them democratic. Now we don't want to spare even our children from the 'treatment'. By the way, we need to analyse the enigma of criminality and violation of law in the light also of the knowledge and experience we have obtained by the studies made into the criminal behaviour of man. Socialising is nothing but refining and reforming.

Democracy is simply the concern of the people and not of their leaders essentially. So what is needed in democracy, as stated above, is to make people themselves cultivated and geared up not only for preserving and upholding democracy as their way of life but also for defending any aggression or onslaughts against democracy. However, upholding and defending democracy in this way demands a suitable ambience where people are able to fulfil this important and difficult task. And it is the duty of the State to create and promote this ambience for the people.

Democratising- ways and means

Implementing laws that are closely related to the day to day life of the people with the earnestness to achieve welfare of the people is the first thing that is to be done in the direction of socialising and democratising society. You cannot socialise an empty-bellied, primarily because his hunger is enough only to make him harsh and barbaric. Social life is meaningless to him. He is able to sense even, only when he is salvaged from his hunger. Give him food, it will help him realise the advantage of social living because he learns that society gave him the food. And

that will make him thankful and loyal to society. Free food for all is not what is meant here. We need to help the people to meet their basic needs first in order to make people conscious about the society in which they live and about how the society is being maintained for them and for their advantages. But the experience of the people is that the State demands many things from them but it does not give them anything in return.

If the State succeeds in generating loyalty among people in the above lines, they would learn to tune their life in accordance with what the State demands from them for materialising a tranquil and peaceful political and social life based on the principle of "one for all and all for one", which principle in essence is democracy. Only from such a people that we can expect they possess the morale and moral strength or the mindset that is required for raising voice against lawbreaking and against all instances of injustice. They would guard and protect democracy.

The next hurdle is, whatever high be the intensity of the people's morale and moral strength to fight against injustice, they won't be able to fight if the State fails or neglects to build up the necessary ambience in which they are able to fight. In the absence of the aid and encouragement of the State, the citizens are unable to fight in a democracy for democracy. So it is obligatory on the part of the State to do whatever needed for creating the ambience that would bolster up people's struggle for preserving democracy and constitutionalism. It's for the State to ignite, stimulate and hold up people's morale for safeguarding democracy.

However, State's power wielders don't like people becoming responsive in that way. They prefer to 'rule' a people who are cold and unresponsive. However, they cannot keep all the people cold and unresponsive for all the time. Some genuinely responsive ones among the people get agitated and become rebellious. And this way the power wielders produce rebels, terrorists etc. etc. in our society. It's by showing might against these 'irregulars' that the power wielders showcase their commitment to the people and to the State. They need only a dilapidated Judicial/legal system. Their design is to enervate the morale of the people and to provoke and innervate the insurgents among the people. It is definitely in this situation that the following question becomes extremely relevant. How is it possible to create the ambience that will sustain and promote the spirit of the people in their struggle against all the impediments and challenges in the way of progressing to a meaningful democracy?

Courts, the first priority

An effective and well-knit network of Courts burdened with the indispensable obligation to "do justice" is the first prerequisite in the building up of the said ambience. Such a Judiciary is not to be a bony, namesake or broken-down Judiciary. It is to be a Judiciary that is efficient and committed to do justice and able to create confidence in the people that they will get justice from their Courts. It is to be one that is able to guarantee timely justice to the people at their immediate reach.

People will repose full faith and confidence in such a Judiciary and that confidence will definitely motivate the

people to bring to Courts all incidents of injustice and all incidents of violation of law including incidents involving commission of crimes etc. that occur in their proximity. If Judiciary is able to prove to the people its competency to adjudicate and to do unadulterated and complete justice in all the incidents brought to its jurisdiction unaffected by any fear or favour, the morale of the people will boost up. A vigilant and diligent people are the assured outcome. And a vigilant and diligent people are the best deterrent for the lawbreakers, for the antisocial and for the corrupt too. Of course, this is the ideal deterrent that needs to work in democracy.

This way judiciary is able to ensure participation of the people in the process of safeguarding democracy in the legal way. Nevertheless, the naked truth is that we are not fortunate to have a Judiciary that is able to rise to the above standards, quality or competency. People need to work forthwith earnestly and diligently for having such a Judiciary for them. It's the first essential phase in ensuring Rule of Law. Ensuring Rule of Law is the commitment of the people. And ensuring Rule of Law is the only way for fructifying democracy and to harvest the progress and prosperity it vouches for us. Democracy is safe only where Rule of Law is safe. People need to overturn "rule of persons" by democratic ways and means to make Rule of Law safe and secure. This is the real cure for any ailment that democracy may be afflicted with.

Paradoxically, a weak and broken-down judiciary is counterproductive every bit and it alone is sufficient for breaking down the morale and moral strength of the

democratic people and turn them cold and unresponsive and thus making them unsuitable for democracy. Corruption, crimes, unlawfulness etc. thrive there without any check. This is just what happens in India.

Policing

The next priority is Policing. We have seen, energising the legal/judicial system is the most suitable and most reliable way to energise democratic people. Without participation of people nothing is fruitful or successful in democracy. Policing or law and order is also never exception to this. In the matter of law and order police is the organ that remains in close proximity with the people. So the Police need to cut themselves before the people as approachable ones in people's struggle against unlawfulness and injustice.

Contradictorily, police is nightmare for the people. Police episodes are dark episodes. We know how they deal with the people in their complaints, problems and predicaments. Police have become an agency that is licensed to do any violence, any atrocities or anything unlawful either own their own or at the behest of those who misuse them. It is as if the law is to be violated by them justifiably. It is as if violation of law is an integral part of their duty of preventing violation of law by others, or of enforcing law and order. Anyhow, their hands have never been free is a valid defence for them. How they are trained and what for they are used are also defences for them. But there is no defence for them for the corruptibility they are notorious for. It is their corruptibility that seems

to be more severe than the other problems they are answerable for.

Of course, we cannot expect police alone to be standing aloof from corruptibility in a corrupt-stricken political and social setup. Corruption is pandemic which devastates everything. Checks, restraints, controls etc. are essential for checking corruption, and they may produce some results also. But developing sense of responsibility and commitment to the people is only the ultimate remedy. And police also need to have that sense and commitment in them. It is their duty. They need to keep themselves away from corruption whatever may the allurement be or the compulsion be before them. Why humaneness thought incompatible with police is another challenge for the police. Police may revisit themselves and introspect for correcting themselves for making them acceptable to the people. People may reciprocate by championing police' cause, which genuinely needs attention.

In democracy the instrumentalities charged with the responsibility of policing are not oppressive hands to be used against people because power-wielders are just people's trustees enjoined to hold power in trust for and on behalf of the people. Power weilders are not high-and-mighty beings amidst the people. They do not own anything on their own in democracy. So the Constabulary is not their private army. Police are no more sepoys under the British rule. Policing is not synonymous with political power of the persons in authority.

Police need to work along with the people. They are to be on duty to come forward for the rescue of the people from the atrocities of the antisocial as well as from the atrocities of those who misuse power and authority for their personal or political advantages. This balance needs to be struck and the police needs to be positioned in such a way that the policemen are able to work uninfluenced in discharging their duty in the above noted lines. Therefore policing mechanism is to be restructured so as to radically change the attitude and approach of the power wielders towards the police as well as the attitude and approach of the police towards their responsibility.

Law and order is the main concern of the Police and they must be able to book 'anybody' who violates law. Nothing should stop them from doing it because in our democracy nobody is immune from law. Police need to be free, though not absolutely free, in discharging their duty. Linking of the Police Force with, or the subordination of the Force under, the Ministry of Internal Affairs cannot work out to be a shackle for the Police in discharging their duties more or less freely and independently, but within the parameters set for them under our democracy.

A free and independent police as indicated above only will be able to work fruitfully for the people. Such a police only will be able to be friendly with people in their interaction with the people. A friendly police means an accessible police for the people. The precarious situation that even a righteous person who has witnessed a heinous crime prefers to hold himself back from coming forward

for the aid of the police needs to end. A friendly police necessarily make people anxious-free, thoroughly confident and hopeful. Such a people will join hands with the police in the discharge of enforcing and ensuring law and order and thereby ensuring Rule of Law itself.

Police may not be compelled to overwork. Their working conditions must improve radically. We should not turn our face against this aspect of the matter. Their safety and security is to be a serious concern for us. There need to be sufficient number of them. Police need to be fully equipped in order to enable them to meet any challenges they may face in the discharge of their duties without needing to put either their own life or limb or that of the people to absolute risk. All modern scientific and technological advantages operating in the field of crime investigation and policing must be made available to them, and they need to be trained for using their brain with the aid of scientific methods instead of using their muscles in matters of investigation and other police functions. The working ambience that will be produced as a result of all these would help refine the Police remarkably and they would become humane if they are lacking in it somehow now. Lastly, a word to the police...Policing is not a sport. Their enthusiasm need to be in procuring conviction for the actual culprit and not to be in somehow procuring "a conviction for a crime". They need to have a true inclination for truth, right and justice.

Judiciary is able, and also enjoined, to perform a great role in correcting the Police as well as in setting the Police

and the Policing system ideally and suitably. An efficient Judiciary presupposes an efficient policing system. Together an efficient Court system and efficient Policing, Rule of Law is safe in the hands of the people. If the two systems break down, what fails is Rule of Law and ultimately democracy itself. It's where people render their assistance to the State in the maintenance of law and order in the society that the State is able to ensure Rule of Law and to turn its focus of attention to other areas of governance that will bring welfare, wellbeing and prosperity to the people, the very purpose for which a welfare State is designed on the bedrock of democracy. In this context it is very much relevant for us to remember the fact that experience speak that economic development of a country often do not serve as an indicator of the superiority of its people in their civic sense, refinement or moral excellence. Going for refinement of the people is going for refinement also, it is not going for economic prosperity only. What we need to think about the State's role in the striving for refinement?

Corruption and the bureaucracy

The wickedest aspect of corruption is that its victim is not an individual or a few. It's instead the crime against the whole people of our Nation. It's the only crime that renders any and every effort in the working up of a Nation founded on welfare State principle ineffective and nugatory. It renders every effort futile and counterproductive. No other crime is so deliberately or intentionally executed as corruption is. It is committed in the lavishness of all the conveniences and with all

preparations and planning. And no human situation would serve as an excuse for committing it. Definitely, searching for mens rea in corruption cases is meaningless and redundant. The crime, at any rate, needs to be treated as the most heinous crime considering the gravity of its devastating nature in which it is presented in our country. It deserves the most severe of the sanctions.

In our country no power centre is free from the malady of corruption. Fighting corruption is an onerous duty democratic people need to undertake. Even a hungry person has the uprightness to remain principled. Still, paradoxically and hypocritically we say low pay is the reason for the public servants, who are fed well by us, becoming corrupt. And our solution for corruption is high pay! We forget, only a few is free from "money-money-more money-more money" mindset.

Bureaucracy forms the veins and arteries of our political body. They are our workforce through which we carry out all of our State activities. The State literally 'appears' before the people in their form and shape. They are the State in human form. People interact with the State through the members of the bureaucracy. People 'learn' the State through them. The State doles out all that it plans to provide to the people through the hands of the bureaucracy. It's through their hands that the State collects whatever it needs from people. Above all, the same bureaucracy itself is responsible for ensuring that it performs all these givings and takings properly, truthfully and transparently. No single Rupee is dropping down from, or move into, the exchequer

otherwise than through the hands of the bureaucracy. As noted, they are responsible to keep account of all the outgo and the income. Their responsibility is huge. And we feed and pay them decently, often extravagantly, in return even by putting our Nation's economy at risk. Actually, our Nation has become a Nation surviving for the sustenance of its bureaucrats only when the amount we spend for them is estimated and compared.

Now, how do our public servants serve and discharge their duty for the pay and perquisites they so receive? By being corrupt from the bottom to the top, besides being indolent and working ineffective, is the answer. What more, corruption takes its origin from the bureaucracy. When compared to corruption in other areas of public life, corruption of the bureaucracy is more devastating because people cannot remove them from their office in the way people are able to remove people's representatives by voting. Pre-planned corruption of the bureaucracy is a phenomenal vice that has made our people despondent and depressive. If our bureaucracy is upright and committed, our country would become a land flowing with milk and honey... no single Rupee will be misused or lost anywhere or anyway. Every single rupee will be used justly and in the right way. What else is required for the country to prosper?

Now, what about the indolence and inactivity on the part of the bureaucracy? It is yet another malady that plagues our nation. Helpless we prefer to call the backwash of this malady by a pet name 'Red Tapism'. We need to realise that this 'ism' is only the result of

procrastination which indicates nothing but absence of readiness and willingness to work despite receiving pay. It is the by-product of dereliction of duty coupled with irresponsibility and carefreeness on the part of the bureaucracy. Is this that we deserve from them for the pay we make? People need to understand that they have the right to see that those who receive pay from them work for the pay. Further, though they are our servants they act as our masters and they consider us as their servants and 'subjects'. They are veritably disloyal a class sucking the blood and flesh of our bodies for quenching their hunger and thirst. Amelioration and prosperity of the people will remain a mirage forever if we are not able to tame and fix the bureaucracy. In India only a few public undertakings are making profit while most of them make loss and become burden for the exchequer. At the same most of the private sector undertakings make profit even though the employees there receive lesser pay, perquisites and allowances when compared to what employees in public undertakings receive. Why is it so?

Actually, our democracy has metamorphosed into a "bureau-cracy". It is one of the biggest challenges for democracy. Though bureaucracy is our workforce, no government is stern even to stare at them. Such is their dominance over the affairs of our country. No doubt, we cannot save our democracy without harnessing the bureaucracy. By the way, the references made here have no universal application. We are truly grateful to those exceptionally good officers who sweat their maximum for the benefit of the people.

A clean bureaucracy would be ringing the death knell of corruption. Where bureaucracy is incorruptible, committed, transparent and working efficiently, Political Statesmen will have no other pick but to remain incorruptible. Deliberating on policies and taking policy decisions would only be the main business for the political Statesmen. Therefore harnessing and setting bureaucracy right is absolutely necessary for repairing our democracy, and our effort on that direction would definitely provide our people with hope and enthusiasm prompting them to nourish and cherish democratic values.

Holism

Man is not perfect, law is also definitely not. Man has some laudable niceties, naturally law has also some. Blending the niceties of man with the niceties of law would procure great results. So, good law in the hands of nice men is the ideal situation that we essentially need to achieve. When that is achieved, democracy is no more a dream. It is real in that situation. There the discrimination as to where law would work fruitfully and where it won't happens naturally and the line of distinction will be drawn receptively.

Science, theology, philosophy... all seems to be significant in one way or the other. They may help us. The extra-sensory and metaphysical dimensions of existence, be it God, spirit or quantum..., have never been ceased from influencing the human life and thought. It seems they will ever continue to be so influencing. The influence cannot be undermined also for any reason. Let

them operate along with the "State operations" without the one sabotaging the other. Secularism, freedom of expression and other personal freedoms may prosper in the country in all these ways. And all those factors together may make our people evolve as the most enlightened people in the world. Is not this ultimately the Constitutional dream? Each Indian is able to celebrate his/her own life in his/her own ways letting every other Indians to celebrate their lives in their own ways without harming anybody else! It reminds us Tagore, the seer poet.

CHAPTER - 4

Ado over reforming Judiciary- What is the role of judges and lawyers in the affair?

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An efficient driver, of course with a minimum amount of sense of responsibility, takes you to your destination even if the vehicle is not in its optimum condition. He himself is able to adapt, adjust and to give first aid to the faulty vehicle without bothering or disturbing his travellers. However, an inefficient driver is only 'able' to risk your life, no matter how good the vehicle is. But we ever experiment only with making repairs to the vehicle whenever we find it moving slow or break down, and we do this blissfully ignoring to check out the competency, qualification or efficiency of the driver taking for granted that all drivers are fit and well to drive, a fundamentally false premise. True, we do not learn from experience.

With Judiciary

It is now the turn of the Judiciary- we are experimenting with repairing this instrumentality, as usual, disregarding

the qualitative aspect of the human resource manning it. We are concerned ultimately with its form and formality and not with its effect and efficiency.

Virtuous drivers

Who appoints is as equally important as who is appointed, for as far as the system is concerned both the appointing authorities as well as the appointees are 'drivers' of the system with equal responsibility. In both the ends what we want is wise and virtuous men, good drivers, dedicated to serve our people. Is there any mechanism which gives you the guarantee that persons charged with authority to appoint discharge their duties unblemished? If there is no such unblemished mechanism, what is the guarantee for the appointees being wise and virtuous?

Power corrupts

Misuse of power is the core issue. Persons corrupted will find out some or other way to puncture a hole in your ship, howsoever sophisticated its structure is. Is it because of any structural errors in the architecture of the Executive or the Parliament as they are framed up by the Constitution that our politicians are corrupt? Or is it due to any flaw in the formality of the process of electing them? Our bureaucrats are corrupt, because of any flaw in the process of selecting them?

New appointing authority

So a new appointing authority may only mean a new domain for corruption. Separation of powers should mean separation of powers. Independence of Judiciary, which

is one of the most inevitable and predominating feature of our democracy, should not be allowed to be frustrated anyway, whatever is introduced in the name of reforming judiciary. At the same time pragmatism behind the concept of independence of the Judiciary cannot be lost sight of.

Judiciary does not mean the Apex Court and a few High Courts only. Then why concern regarding appointments to these Courts only? It really smells some trouble… some political scheming, or filthy politicking? By the way, we have great and wonderful politicians, it won't be honest if we find fault with all our politicians, and with their politics and their finer ideologies.

The point is, if the process of transformation does not occur at the roots, no purpose is achieved by revolutionising the outgrowth only. Trial Courts are the roots of the Judiciary, and so the first focus must be on the roots if we have purity of intention. Common man's rescue is trial Courts and that must be willingly accepted by all concerned. Then, why no concern showcased regarding the subordinate Courts and their efficiency and integrity? Why no concern about increasing number of Courts and judges in tune with people-judge ratio, even after verdicts of the Hon'ble Supreme Court to that effect? Without optimising people-judge ratio, no attempt is fruitful because we are "targeting" only statistics by asking a doctor who is able to do five heart surgeries a day successfully to make it fifty or even more per day. No doubt, all the fifty will be failure. No matter, having achieved the target the doctor is safe, he is paid and he

will be praised also by the target setters, but he will be blamed and ridiculed by the relatives of the patients who died at his hands.

'Disposal' is the new word and not adjudication, which, in turn, has become a relic. What a casualty justice has fallen into! Be aware of one more thing, the 'assisting surgeons' are also leaving the patients suturing incomplete. How the target practice affects the quality of the lawyers is paid no attention. Why? And, could the lawyers remain unconcerned over what happens?

Ensuring efficiency

Coming back to the appointment issue, it's not that who appoints, who is appointed, how appointed etc. are not without any significance. Ensuring transparency in appointments seems to be welcoming also. However, as stated above, the process of appointment does not guarantee anything, much less quality of the appointed. So, once the policy of appointment is structured optimally, we must concentrate on the day to day working of the system on a real time basis than on further checking the strength of its structure. If there is no mechanism to ensure efficiency and purity in the day-to-day working of the system, reforming the appointing system only is of no use. To add, confining our thought only to the matter of devising of yet another new centre of authority for this purpose does not appeal to the reason. Then how the purpose could be achieved?

Mechanics of checks & balance

There is one proven 'mechanism' which is enough to give life, vigour and vitality to all democratic institutions in

our setup. The tool is nothing but the flywheel of checks and balancing mechanism. It is not a theory. It's to democracy like what breath is to a living organism. Without it democracy will be rolled to a halt. Checks and balancing mechanism is not one that is applicable only on the structural side of governmental machinery which is framed to be working on separation of powers. It is equally or more than equally applicable on the functional level too of the machinery. If it is not employed on the functional level also, we won't reap the fruits of the same being applied on the structural level as well.

Glorious democracy

Democracy is not people going on a slumber after electing and selecting somebody to wield power according to the wishes of the elected or the selected. People's role only begins with electing their representatives. It's the duty of the people to see that their representatives discharge their duties perfectly and with commitment. A vigilant and responsive people are the secret behind a glorious democracy. Each response from the side of the people is a check on the system and each such check is a balancing act which prompts the system to keep it in, or to spring it back to, its proper place and order. This is how the principle of check and balancing mechanism works on the functional level of the system when people become vigilant and responsive.

Compassion, backbone, uprightness

The mechanism involves stop and proceed, giving way and making way, warning and appraisal, give and take and also give-and-take, all these in the interest of the

common good. In the process nobody is below and nobody is above, all work in their own sphere complementing, and also complimenting, each other in the interest of the people. If Opposition members in the Parliament are not instilled with the spirit of checks and balance mechanism, the Opposition would fail in fulfilling the role assigned to it. If Opposition in the Parliament sits idle, we can imagine what will happen in the country. That is why Opposition is given its undeniable position. An active Opposition, though not invested with any power to rule, is able take part in the rule by correcting the Ruling Men by employing checks and balancing mechanism meaningfully and effectively. So we have a powerful tool in our hands to tame and control the wary and the self-interested, and of course the unfit. Responsiveness or reactivity is the only fuel that is required for the tool to work. And that fuel is naturally generated if we could possess a little amount of compassion, a normal backbone and a not so bad level of uprightness.

People no remedy

The problem is that we do not employ that powerful tool meaningfully and effectively on a day-to-day basis in the actual working of any of our Constitutional organs, and this is particularly more so in the case of the day-to-day working of our Courts. No controversy, people is precluded from interfering in the working of the Court, of course for valid reasons. People have no occasion to raise their voice or use their tool of checks and balance mechanism when Courts go wrong. They cannot show

their disapproval by voting also. That means, unlike in the case of other institutions, people more or less cannot do anything directly to save Judiciary whatever happens to it.

Then who can, and who should, shoulder the responsibility on behalf of the people in the task of saving their Judiciary? Lawyers and judges only can, and should, is the answer. They together should represent people's aspiration for an incredible Judiciary. It is achieved by democratising the Judiciary, though not by introducing into it the element of representativeness which the Judiciary is blamed lacking in. Will the introduction not create an impression in the minds of the people that even without their participation their Judiciary is safe in the hands of their Judges and Lawyers? After all, it's only everybody's primary and basic duty to ensure that democracy is really and actually at work in every aspects of our political and social life. No need to emphasise that judges and lawyers also has that duty. Of course, we cannot envisage introducing 'representativeness' into the Judiciary in the way we do it in the case of the other two organs of government as people have no voting right in the case of Judiciary. How is it possible, then? It is possible only by introducing 'elements' of democracy into the "day-to-day working" of the Judiciary, i.e. on the functional level of the Judiciary. And that is achieved by employing the most powerful tool of checks and balancing mechanism, which is the active principle behind the theory of separation of powers and the inevitable element working behind democracy, into the day-to-day working

of Courts. Who else is able to do it if not the judges and lawyers?

Judges, Lawyers & the Constitution

Now, coming back to the duty of judges and lawyers to safeguard the Judiciary... First of all, Court does not mean judges. No Courts without judges, and lawyers too, because adjudication is, and should also be, the outcome of the joint effort put in by judges and lawyers. So judges and lawyers are the two limbs of one entity, the judiciary and it cannot endure with any one of the two. If judges have, their office apart from their occupation for livelihood, great role to play in the making and maintenance of the Nation, lawyers also have the same role in it, their profession apart from an affair of their pockets. Judges and lawyers equally must realise this role and instil this into their mind and work together for the common goal set by the Constitution for our country. Both must identify and accept the space and position people occupy in between them and around them.

Lawyers' virtues

Lawyers should be mindful of what makes their profession a noble profession. It's for sure, not the money that they make out of the profession that makes it noble. Money has nothing to do with nobility. Then what? What about dedication, commitment etc. of the lawyers to the society….? If they don't carry even a little of these principles along with them, how can they find fault with judges and engage themselves in the process of reforming judiciary? Judges are competent and are men of integrity…what is the use if lawyers are not? Lawyers

also must be equally competent and incorruptible. To be competent and incorruptible is the irrefutable obligation lawyers owe to the people because every institution in democracy is for the people. Lo, Judges and lawyers….be thankful to the people who opted you and sustain you… who bestowed upon you the privilege to serve them... by paying you decently, rather extravagantly.

Accountability

Craving for judicial accountability, as it is given tongue to so far by many, is a utopian idea which is enough only to frustrate the working of the principle of separation of powers. Relax in the accountability of the Judiciary and in the matter of tenure of judges is acknowledged by the Constitution only because the same is indispensable and desirable too in our system, provided wise and virtuous men only occupy the seats of justice. No fear… none in democracy is all powerful; there is nobody in democracy whose powers are not circumscribed. Courts, never exception to this. Its powers are defined, controlled and limited by law. It is not allowed to travel beyond the limits set by law. Judges are no more law-makers in any sense. No power emanates or originates from individuals as individuals, nor is it reposed in any individual to be wielded by him for his own ends, or according to his whims or fancies, or in a manner in which it is likely to be infected with or affected by his prejudices or personal predilections. Objectivity is the hallmark of judicial decisions. Objectivity and transparency can never be suspended by allowing subjectivity of the decision-maker to intrude in. These aspects pinpoint the

significance of the strong restraints judges are bound by. Actually every judge is accountable for his failure in keeping himself within the restraints. We need to have an eye on them to ensure that they don't violate the restraints.

Watchdogs

The pivotal point is judges and lawyers are the watchdogs of the institution of Judiciary. It is for them to safeguard it and it is possible only for them, and only they are answerable and accountable for what happens to it. There is only one way to save the Judiciary. It is, as noted above, by employing the principle of checks and balance mechanism by lawyers as well as judges in the actual working of Courts.

Responsiveness and reactivity

It would be fruitful to imagine about lawyers who are not prepared even to convey to the judges concerned about the inconvenience to which they are put by some judges by their practice of commencing after-lunch session at whatever time they like keeping lawyers waiting in the Courtroom even for hours. This is only one instance. One can take stock of the overall situation of the quantity and quality of responsiveness available on the part of the lawyers from this one instance. They never unite also. No wonder, it seems our country has not ever heard any orchestrated voice of our lawyers in any matters seriously affecting our people's life in the recent decades.

Whatever, lawyers should have the courage and morale to respond, of course, courteously and without losing respect for the Court whenever judges act or behave in a manner not befitting to judges. If lawyer finds it unsuitable, in the context of the issue and situation, to express his response in the open Court, he should not. But at the same time he should not hesitate to proceed against the judges before authorities set up for such purposes and should pursue the proceeding until it is finally decided. The same course must be adopted by judges also when lawyers go wrong. In this context it must be stressed that a strong mechanism powerful enough to deal with such complaints in the most effective and serious manner is an absolute necessity. Judges and lawyers must not lose sight of the fact that Contempt law is double edged and that a judge is also liable to be held in contempt of his own Court.

Pleasing or appeasement is not advocacy, neither is it displeasing or aggression. Boldness or standing out strongly and distinctly is not far from advocacy, but being timid or servile is definitely short of advocacy. Respect is for the institution and not for the individuals, and so mutual respect is the true spirit that must govern the ground. Why can't the Judges also make it a practice to address their own Court 'Hon'ble' when they refer to their own Court? It necessarily needs to be made so, and that will help judges to identify and perceive the true and proper position they occupy in the Courts and in the system as well.

Judges, Lawyers and the Dishonesty

Becoming a judge does not involve any metamorphosis signifying an automatic overall refinement of the individual. Reformation, Refinement and the correct mindset of a judge is achieved only by and by. Judicial dishonesty is the worst thing a judge can do by misusing his office. Only lawyers in the country have the occasion to experience the episodes of judicial dishonesty directly. But how many complaints have been triggered by lawyers in India against judicial dishonesty? How many have been disposed of and how many are pending? The account will reveal the ground reality that lawyers have become unresponsive and so, totally 'unaccountable'.

Do lawyers slip from professional ethics? It must be a serious concern for the judges also. They must react by all possible means. Judges must never fall prey to the 'pleasers' or 'appeasers', or to the 'aggressors' as well because dignity or self-regard is unconnected with egoism. Respect is not produced by command. It is self-generated out of esteem for the great ones and for great things. Of course, pleasers and appeasers are abundant among the lawyer community, and the 'strength' of the judges who 'enjoy' and fall prey to the pleasing or appeasing never disheartens the pleasers or appeasers. Pleasers and appeasers thrive and the preys get their doses of intoxication and self-gratification. People are the actual victims.

If dignity of judges is more the lookout of the lawyers, then the dignity of the latter must, more or less, be a concern with the former also. Mutual respect is what is

contemplated and all the contemplation is aimed at creating a congenial atmosphere for the Courts to work in. Judges disrespecting lawyers is never rare, and lawyers disrespecting judges seems to be not common. Anyhow, both must end, definite. Character and conduct always matter. The conduct and character of lawyers and judges need to be such that the same inspire respect and confidence mutually between them.

Judging judges and lawyers

Lawyers only have the opportunity, and also the ability, to gauge the competency, efficiency or fittingness of a judge to be a judge. They should make it a point to report to the concerned authorities regarding the incompetence, inefficiency or unfitness of a judge to continue to be a judge, and a proper authority to deal with such reports is, definitely, a prerequisite and action must follow without exception, provided nothing relating to such proceedings reach the public domain at least until the matter reaches its logical end. The saying "judges are judged by lawyers" must become a practical reality and a new saying "lawyers are judged by judges" must spring up and echoed in the temples of justice, but without affecting independence of the judges or of the Bar.

The check out mechanism

The constitution, powers etc. of the authority to deal efficaciously with complaints against judges as well as lawyers needs much deliberation, but we cannot dispense with the need of it for any reason. Which are the safe hands is again a baffling question popping up here also.

Anyhow, who decides cannot, and need not, be given undue significance because ultimately all decisions are manifestations of the will of the people, the Masters. Nobody and nothing is above the Masters, the people. Ego is wasteful and undemocratic. How people are benefited must be the touchstone, whoever be under surveillance. All must admit that the invaluable and the most sacred document in our country is ballot in the hands of the people. All mechanisms are ultimately inventions of the people for the people. There is no 'I' in power in democracy. So there is no seat for I-feeling. There is only 'oneness or 'unity', the wholeness feeling. Protocol issues and who is superior brain-teasers and concerns are not the riddles that concern democratic people because people are the superior most in democracies.

That being the true position, framework of a three tier mechanism for dealing with complaints against judges and lawyers seems to be feasible and thinkable. A State authority consisting of Chief Justice of the High Court of the State, Chairman of the Bar Council of the State and the Head of Faculty of law of any one of the Universities in the State- at the lowest level to deal with complaints against all Judges including judges of District Courts and against all lawyers in the State including lawyers practicing in the High Court of the State. One central authority consisting the Chief Justice of India, Chairman of the Bar Council of India and one or two of the Heads of Faculty of law of any of the Law Universities under the Central government to deal with complaints against Judges of the High Courts including Chief Justices of the High Courts and against all lawyers practicing in the

Supreme Court of India. At the top, authority consisting of the President/Vice-President of India, Chairman of the Central Bar Council, the Judge in charge of the vigilance wing of the Supreme Court and one or two of the Heads of Faculty of law of any of the Law Universities under the Central government to deal with complaint against all Judges of the Supreme Court including the Chief Justice of India. Why can't we think about the feasibility of bringing Contempt Proceedings also under this mechanism when such proceedings relates to Judges and lawyers? Let's have a wonderful dream where we watch our cleansing mechanism, the Judiciary, filters and purifies the entire polity. That is it.

Bookish drivers

Sufficient Court experience, especially on the trial side, is a sine qua non to be a judge, irrespective of what Court he/she is attached to. "Learned in law" without experience is not better than a driver learned driving from a book. No lawyer without sufficient experience on the trial side must be appointed as a judge even in the Apex Court. Why do we, if we have drivers who have mastered driving on the rough and tough roads? Yes, it adds greatly to the transparency in appointments as well as to the quality of performance. It makes verdicts of our Courts realistic, earthbound and replete with practicality and pragmatism. There is no guarantee that wisdom without experience is absolutely free from risk. Do we need any rarest geniuses to handle the position of judges? Though such men may add to the glory and excellence of our system, do we need to keep any strategic doors of our

system open for their entry in our earnestness to absorb such persons into the system? It's like keeping the crop in the open place while we are away searching for the strongest of the warehouses for storing the crop. Our democracy has not matured into a stage where the makers of the Constitution imagined we would be able to keep our doors open for the entry of the hotshots without we putting the system to any risk. We have not been able even to coin a perfect appointment system in the case of Judiciary.

Anyhow, a person who is inspired by ego or egocentrism is simply an unfit for the strenuous and noble task of judging, whatever may his capabilities are. Powers, privileges etc. are just facilities for serving better, and not for satiating the ego of the person in authority. People are the source of all power must never be dismissed from the mind. No power in democracy is, or could be, left uncontrolled, unregulated or undisciplined, because democracy's disbelief in concentration of power in one person, or in one authority, is complete and perfect. Concentration of power is the death of democracy.

Lighting up cleans

Nudity is not nudity in privacy. Law-breaking, criminal acts or all evil acts occur in privacy and secrecy. So every corridors of power must be lighted up and illuminated so that none in power is able to misuse it, mal-use it, or is reluctant to use it properly. Transparency is enough to bring in revolution into any system. As far as judiciary is concerned the judges and lawyers together only are able to light up and illuminate the corridors of the Courts so

that transparency is achieved which is essential to sweep away the filth and dust piled up there by the corrupt, the inefficient and the incompetent and thus to clean up the contours of Judiciary. The idea is this: judges must be checked by lawyers and lawyers by judges. There is no other mechanism to save and ameliorate the Judiciary in our democratic setup.

The all-powerful arm

Public opinion is the only bad omen, if not nightmare, for public men. It deters…. and only it deters…. Public opinion is the magic wand which performs wonders in democracy. That magic wand only is the remedy for the Judiciary also. Our judges and lawyers should make use of the wand and swirl it whenever they find it useful or needful between them for correcting each other, of course within all restraints. Judiciary is saved, and we would experience an efficient, vibrant and respectable judiciary, this way…only this way.

CHAPTER - 5

Judiciary from the democratic perspective

Judiciary from the democratic perspective

Constitutional obligation of lawyers & judges

What is the Constitutional obligation lawyers owe to the system, to the country and to its people?

Inspired by the insight and awareness ignited in their minds by the learning they obtained on the political, social and personal rights man is entitled to as well as on the exalted position and space man occupies in a politically and socially free society, lawyers of the country dedicated their life and spilled their blood for liberating our people from the political and social bondages they had been entrapped in. In this context the word lawyers is used to mean all person who have learned law.

There had not been any political or social movement in the country without lawyers on the forefront as leaders or as vigorous fighters or champions. Almost all our great leaders of such movements were persons educated in law. They had proved themselves to have been a class

selflessly dedicated for the causes of the people through their peerless contribution to the country's freedom movement and social movements.

This stature of the class naturally inspired the makers of the Constitution to repose huge amount of confidence in the lawyers of the country while devising the political mechanism for the country. They assumed lawyers as a distinct class of people who would relentlessly struggle for materialising the goals set by the Constitution for the hapless masses of the country. They conceived and believed that Judiciary of the country would be safe ever in the adept and virtuous hands of our enlightened lawyers. Keeping firmly that in mind they strategically left the Judiciary to be manned, safeguarded and protected by lawyers and judges from the exceptions and adversities it might face in its way of accomplishing its mission of delivering justice according to law as assigned to it by the Constitution.

But now the reality in the country depicts a story of betrayal wherein judges and lawyers played the betrayers and people the betrayed. So the chronicle of our Judiciary is full of egocentric foul play and trickery played on the people by judges and lawyers for their personal ends and enrichment. Judiciary is actually orphaned by them, instead of safeguarding and protecting it. It is full of exceptions and depravities. Therefore the end of the story is that Judiciary is facing the biggest ever criticism and disapproval now for sound and valid reasons. The pathogen and the curative are one and the same, lawyers and judges, nothing else, nobody else.

Scope of the obligation

Now, what is the scope of the responsibility so lifted onto the shoulders of the lawyers and judges by the makers of the Constitution? Let us deliberate. No system or institution is perfect is a general perception. Every institution has its own flaws or disadvantages which may eat away the institution itself by obstructing the progress or accomplishment of the mission aimed at by that institution. But this is only an explanation to the general perception stated just before. Be that as it may for the moment. But it is relevant here to ask whether the flaws or disadvantages are inherent in a given institution or whether the flaws or disadvantages are something appears in its texture as a result of misuse of the institution by men in charge of its operation.

We have discussed this crucial aspect elsewhere in the book and concluded that the human element in the operation of the institution is the crucial element that is at fault. The conclusion because even an inherently faulty system may work well if its operators are fit, and on the other hand even a perfect device may produce maximum harm if its operators are unfit. Any device demands a minimum quality of human resource for manning it. It is assuming that such a minimum quality is a guarantee that a system or device is designed for achieving its specified goal through that minimum quality human resource. But that guarantee is no guarantee at all is the actual flaw inherent in the working of any device that fails in achieving its desired goals or that 'succeeds' in producing untoward or undesired results.

The fact that no device demands intellectually giant persons with extraordinary capabilities or qualities for its operation is also relevant. Men possessing ordinary wisdom and manly virtuousness are enough. Anyhow, wisdom is not rare at all, but virtuousness is very much rare is the unfortunate experience.

Now, the framers of the Constitution devised our Judiciary, Legislature as well as the Executive on the assumption that persons possessing the said minimum quality of wisdom and virtuousness would be available for manning those organs of the governmental machinery of the State. However, the experience of the country proves that makers of the Constitution were wrong in their assumption. We could not satisfy their expectation of ourselves regarding the qualitative aspect of our being. More than any other factor this is the crucial flaw which holds us far back from materialising the dreams of the Constitution makers, rather this is why we miserably failed in that effort.

If we continue to fail in supplying the minimum quality human resource required for manning our Judiciary, Legislature and Executive, nothing can save us. Having perceived the significance of the quality of human agency that is required for the fruitful functioning of a system, we come to the conclusion that the Constitutional obligation of lawyers and judges is to remain to be as wise and virtuous as is required for the Judiciary to work without fail. Their wisdom and virtuousness account for the failure of the Judiciary. And its success would definitely testify for their wisdom and virtuousness.

Discharging the obligation

Now, how the wisdom and virtuousness of lawyers and judges should find their manifestations in the working of Judiciary? If each part of a large engine starts to work in isolation, the engine will crush. This happens to Judiciary also if judges and lawyers perform their duties forgetting that they are part of a large system. They must be fully aware of the fact that they are part of a larger system entrusted with the solemn duty of delivering justice to the whole people of a Nation which regards life and liberty of its citizens as the most precious ones of all. And they should discharge their duties in such a way that their work complements the working of such a system with such sublime goal.

If this does not happen, the Hon'ble Supreme Court will have to repeat recording its conscientious shock as it had to while dealing, recently, with the predicament of a senior citizen who had been incarcerated 91 days by the time his case came before that Court for the 'crime' of "raising his voice and shouting at a Court bailiff". In that case all the Courts below the Apex Court proved that they had no regard for the liberty of a citizen, no regard for justice and no regard for fundamental principles governing criminal jurisprudence of our Country. The problem is, they worked as if they are a world on their own divorced from, and incognizant of, the larger and greater perspective and background in which they are expected to work, and they acted with a mind that resembles that of an autocrat who reacts retributively towards any act which he 'dislikes.'

Hence, to be aware and conscious of the pulses and impulses of the system and to act in tune with those pulses and impulses that keep the system meaningfully alive and down-to-earth is the basic duty of lawyers and judges. If they fail in that duty, it is manifest that they lack in the minimum wisdom and virtuousness the system needs from them for its functioning as envisioned by the makers of the Constitution.

The unfit ones, whatever the position they occupy, must be dispelled because our huge mass is suffering untold miseries due to the harm they do to the system, and also due to their presence at the helm of the affairs of the system. Nothing justifies the sufferings of the masses. Few Individuals putting the masses to sufferings is not what democracy is all about. If it happens so in democracy, it is an irony that must be washed-up. Equality before law is not a pompous or ceremonious phrase. Irresponsibility, dereliction, misbehaviour etc. are all rank delinquencies whoever be guilty, whether the superior most or the last in the rank.

Courtroom democracy

Judges and lawyers will be paid for their service. But their service is not for seeing that they are paid. Judges are paid not just for 'disposal'. Lawyers are not hired fighters. They are not hired for plea making or bargaining. We have seen how our judges and lawyers are obligated by our Constitutionalism to protect and safeguard our Judiciary viewed from the broader perspective. And the protection and the safeguarding they render must be the

aggregate effect of their work as a class which ultimately helps the whole democratic system to sustain.

But how they are able to materialise that lofty goal? Courtroom is their primary scene of action. Responsiveness or reactivity is the essence and content of democracy at work irrespective of the arena. Remaining insensitive or unresponsive is not judging or lawyering. Keeping an eye on any instance of violation or miscarriage of justice is the obligation of judges and lawyers while in Court, if not anywhere else. And such instances should make them sensitive and responsive. They must be able to check and balance between them when either of them err or go astray. But one condition is relevant. All the checks and balancing acts, responsiveness and reactivity must be exhibited only in the manner befitting to judges and lawyers as responsible officers of the Court. It is for the judges and lawyers to demonstrate how democracy works in Courtrooms or what Courtroom democracy is about. Whatever, it must work there.

Crusade against subjectivity

Subjectiveness in the actions and perceptions of individuals has always been the most difficult hurdle before the humanity in its march for progressing into society made up of individuals ready and willing to acknowledge and respect the rights and dues of all individuals in society. Law is an instrument aimed to achieve objectivity in social life by attempting to strike balance between the larger interest of society and narrower interest of the individuals. Law attempts to

strike the balance by preventing intrusion of subjectivity into areas where those interests tend to conflict.

Every system in democracy is an experiment to dispel and rule out subjectivity in matters of social significance like personal or fundamental rights of the citizens, conflicting rights or interests between individuals themselves, conflicting larger interests of the State and the narrower interests of the citizens etc. by placing objectivity to reign in those areas. Democracy is doing away with subjectivity and ensuring objectivity for materialising common good.

Unfortunately subjectivity still reigns in and it continues to jeopardise all attempts in doing justice in every area, and objectivity is still a mirage slipping from our hold.

So our system is beset with the worst evil of subjectiveness making headway in the realm of decision-making and justice delivery. It hinders and jeopardises every footstep towards reaching or achieving the goals set by the system. The evil creeps in when individual in power exercises power in forgetfulness of the comprehensive dimensions and goals of the system of which he is only a part. He forgets the broader principles that govern the system and he ignores the rules and principles that bind and restrain him in the exercise of his power. Instead he exercises the power according to his whims, fancies, prejudices and personal predilections dictated by his own subjective gratification. What else is needed to keep the system crippled forever and to draw

it further back to subjective or personal rule preventing the system from fulfilling the democratic requirement of non-subjective exercise of power?

We have never been able to save ourselves from the evil of personal rule is the real fact-situation we experience in our practical life, though we are proud to say that we are a democracy. This is the worst malady the country is afflicted with. Even the last grade servants act and behave as if their likes and dislikes govern the realm.

Each judge is conceiving himself as an entity separated from the entirety and does things like what was done to the senior citizen in the story that was revealed before the Apex Court. The only remedy is to make judges work strictly in accordance with the rules and principles that govern the working of the entire system, this with the aim in their mind to compliment the working of the system as a whole and never without derogating from that aim. And ensuring this throughout the Court system is the primary duty of our Constitutional Courts if they are conscious of the vicious circle of subjectivity that has swallowed up the judges including those of the Constitutional Courts. Lawyers also must be thoroughly sensitised in this regard and they must be prompted to work keeping in their mind the significance of the issue discussed. The evil of subjectivity has no better cure than these in the working of the judicial system. The role of the lawyers in this count is crucial if they are able to perceive their actual role and position in the system.

Lady Justice's blindfold

Consciousness regarding one's own identity is the basic stuff in the psyche of a human being. He is by nature self-aware or self-conscious and this is what seems make him distinct and distinguished. He sees himself and the world around him through the mirror of his self-awareness, and then a beautiful and distinct world is freely flowered up into his consciousness. That world is beautiful and pure because his psyche is not tainted by self-importance or egoism. He does not place himself superior to others.

But the beauty and purity of the world is lost as soon as his mirror of self-awareness is replaced by the mirror of self-importance or egoism. The images get distorted and he starts to see things in the light of the distorted images created by the mirror of self-importance. Egoism this way introduces subjectivity into a person's perception.

This changeover occurs almost naturally. No harm so far as the person deals with his own affairs. But, if he handles the affairs of another with that self-centred, self-complacent and often self-gratifying view or approach, it is harmful enough. This is why the maxim embodying the principle of natural justice "no person shall be a judge on his own cause". Now, if the evil of subjectivity tends to taint the consciousness of a judge in an event where he happens to sit in judgment in his own cause, it is likely that the very same subjectivity may taint his consciousness when he happens to sit in judgment on another man's cause also. The conclusion because, the fact that

subjectivity happened to sprout in his mind while deciding his own case gives us the indication that he is basically vulnerable to be a victim of subjectivity. Then such a judge is not qualified to sit in judgement in another man's cause also just like he is not qualified to sit in his own.

Therefore, what the maxim "no-one should be a judge in his own cause" actually conveys is that being objective by subjugating the tendency to be subjective is the most difficult task for a man. It requires good amount of experience, training, practice and wisdom. It is a matter of refinement of person and personality. However, that must occur in the case of our judges. After all, what else is the way to acquire wisdom and virtuousness other than by getting engaged in the effort to get refined and purified and ultimately getting refined and purified? Winning in conquering one's own ego is known to be the ultimate stage and state of refinement. "Though one may conquer a thousand times a thousand men in battle, yet he indeed is the noblest victor who conquers himself... Not even a god, an angel, Mara or Brahma can turn into defeat the victory of a person who is self-subdued and ever restrained in conduct", says Budha in verses 103 & 104 of Dharmapada.

If judges and lawyers fail to realise the significance of the need to dispel subjectivity and to position objectivity in its place to function at the bottom of the cognitive process involved in the decision-making task, adjudication is only a mockery resulting in miscarriage of justice. Judges must realise the serious consequences

if they fail to become objective in any manner in their work as judges and they must endeavour to be objective in every possible sense in dealing with cases before them. The blindfold worn by Lady Justice symbolises this basic qualities of objectivity and dispassionateness judges inevitably need to possess.

The first qualification for a person to be a judge is to become free from all sorts of prejudices and prejudgments. He must be able to set himself and his personal opinions aside. No person who is a prey of his own ego or self-importance or self-gratification is qualified to be a judge. Judges must be intuitive enough to realise the significance of objectivity in the decision-making process and they must train themselves to be on guard in preventing subjectivity from intruding into their minds while sitting in judgement in a cause. Lawyers should take every care to ensure that decision-making process is unaffected by the vice of subjectivity. First impression is the best, but worst when it comes to adjudication which essentially demands objective deliberation. Extra-legal inputs finding place in decision-making process must be checked to the maximum possible extent.

State powers separated

Montesquieu's theory sliced up absolutist or autocratic governmental power in order to prevent the same from being oppressive or tyrannical. Following Montesquieu, our Constitution sliced up governmental power of the State into three with the clear vision of investing the power with separate organs to be exercised by them

independently of each other but at the same time complementing each other. Legislation is the subject exclusively earmarked for the Parliament/Legislature and the power to administer justice according to the legislation exclusively for the Judiciary, and executive power with the Executive.

Parliament & the Executive accountable

Two of the three dominant heads of power in the sovereign power of our Nation that directly affect the life of our people are (1) law making and (2) policy decision-making and its implementation. Those spheres being most strategic as far as people in a democracy is concerned, they cannot be left open to some power wielders without giving people the opportunity to echo their voice in those matters. So, justifiably our parliamentary power and executive power are wielded by representatives elected by people, and the representatives are answerable or accountable to people. How far they answer and account is another controversial, but bare, aspect.

Judicial power of the State

The remaining third head of power of the State is its judicial power, definitely in par with the other two powers, which is confined to dispensation of justice according to law. Law is made by people themselves through their elected representatives and hence the truistic assumption law reflects people's will. Naturally, Judiciary has no role in the law making process and so it actually doesn't make any contribution to the country's Corpus Juris.

What judiciary just does is that it finds out and applies the correct law to fact-situations in litigations coming up before it for adjudication. Of course, in doing so it has power to interpret law to find out the intention of the law makers when the intention is not discernible from the plain language employed by the makers. This power to interpret law is the only area where Judiciary has an ostensible free hand by applying which it has the chance to effect its influence or impact on the body of our law. That power, definitely, is bestowed on the Judiciary for valid and sound reasons of Statecraft and in the interest of the polity, people and democracy. However, there the Parliament has every power to undo the impact if it works out against the interest of the people.

Judiciary never lawgiver

Law to be law in democracy, it must reflect the will of the people. If it must reflect the will, it must be made at the instance or by the approval of the people. Therefore, only the law which is made in Parliament by the representatives of the people has the sanctity of law in our land. This is the test and touchstone brought about and endorsed by the Constitution for deciding what amounts to a valid law. This fact is more discernible from the pattern of power distribution resorted to by the Constitution.

Constitution has not provided for any other mode of making law, nor has it envisaged any type of law with a different character from the above. Broader assumptions are often blindfolded and unreasoning, and so misguiding. Constitution has not allocated any law

making power to be exercised by the Judiciary in any area of law. People have no representation in Judiciary. So Judiciary cannot make law that reflects the will of the people. Precisely, in India Judiciary has no power to make law.

Judicial Review

Power of Judicial Review does not take in making law. It consists in reviewing law made by the Parliament/ Legislatures in order to ensure that no law is made by them against the provisions of the Constitution of India. Power of Judicial Review is a strong mechanism devised with the specific objective of preserving the Constitution from being deformed or anyway weakened by the work of lawmakers in the guise of exercising their power to make law. It harnesses the lawmaking bodies. By exercising its power of Judicial Review the Judiciary literally discharges its duty as the guardian of the Constitution.

Parameters of judicial accountability

If things are so with judicial power, is there any further interest of the people to be protected by securing people's representation again in the matter of dispensation of justice according to law made by people themselves? If law is compared with a measuring cup made openly in the presence and with the approval of the people, then is the same people's presence necessary where people's dues are measured by using the same cup just like their presence was necessary when the cup was made? Not necessarily. That is what reason dictates, apart from the reason of

impracticability inherently involved in ensuring people's representation in the judicial process of the State.

The conclusion thus reached is that the attempt to ensure the same kind of accountability to people from the side of Judiciary also as it is attempted to be ensured in the case of Parliament and Executive is superfluous and uncalled for in the setting of our democracy. Therefore the hue and cry for the same is out of place, whatever is implied in the phrase "judicial accountability".

Impeachment

Nevertheless, the corollary of the above conclusion can never be that the Judiciary is not accountable to people anyway. It is conspicuous that Constitution makes no stringent provision for any mechanism for securing judicial accountability to the people to the extent to which many demands it from the Judiciary. At the same time, it is equally important and relevant a fact that the Constitution does not provide that Judiciary is unaccountable for any purpose. This fact along with Article 375 of the Constitution, which enjoin all courts, authorities and officers in India to continue to exercise their respective functions subject to the provisions of the Constitution, provide sufficient rational basis for those who want to remain to be subservient to the Constitution. Needless to mention, to be subservient to the Constitution is the constitutional obligation of our judges.

Allegiance to the Constitution, therefore, is the irremissible minimum eligibility to be a judge. The next

point that arises here is regarding, how should a judge prove or demonstrate his allegiance to the Constitution while holding his office? Of course, by discerning his true position in the Constitutional framework of power allocation, by building himself up to the stature suited for that position and by committing himself to the industrious and illustrious task of carrying out the Constitutional dreams into reality by working within all his reaches and restraints set by the Constitution, but these without forgetting to compliment the working of the other two estates of power sticking firmly to the principle of checks and balance mechanism which is adopted by us as a device for keeping our democracy working real and dynamic.

Even with these parameters, the constitutional device of impeachment didn't prove a useful catapult. Not because it is a very weak weapon. The actual reason is that men in charge of our affairs are busy with their 'own' affairs in their own way keeping Constitution at a safer distance where it won't annoy them. So impeachment remains an ever virgin weapon.

Interpreting and enforcing law

People's will is people's wish and their wish is what they intend to achieve by law, implying that a piece of law is what its maker intended by it. So enforcing law implies nothing but enforcing the intention of its maker. If the maker's intention is eluding from the easy understanding of the law enforcer, enforcing law in which the intention is hidden becomes impractical. But that cannot be an excuse for not enforcing law, because abstaining from

enforcing law is not an excuse. Then the law enforcer has to embark upon the task of searching for and finding out the intention of the law maker. The only method by which he will be able to accomplish the task is by interpreting law. So interpretation of law is a very important aspect of our legal system.

The actual significance of the Judiciary lies in the fact that it is the only authority invested with the power to interpret the law of the land including Constitution. Interpreting law is a difficult exercise requiring skill and expertise and it's not a layman's business. It involves seeking to find out the intention of the law makers when the intention is not plainly discernible from the language in which it is expressed. In practical terms, it is the exercise of this crucial power that gives life and vitality to the law. It is the essential power that we need to keep our law dynamic and elastic, and also adaptable to divergent situations and changing times without losing the generality of the law. By interpreting law in this 'meaningful' way the Judiciary plays its great role in "shaping the law" of the land. Lawyers play their significant part in that facet by actively assisting judges in the effort to interpret law. Now there is a misconception that whatever reasoning contained in judgements are original reasoning formulated by judges alone while it is actually not so and cannot be so in the context of our jurisprudence.

Interpretation in the final analysis is setting forth what the law is by understanding the real intention of the law maker. Article 141 of the Constitution thus invests the

Judiciary with that crucial power to set forth or state the law of the land in terms of the intention of the law maker.

Interpreting never making law

The word "declare" used in Article 141 can only mean setting forth or stating the meaning of the law in terms of what the maker meant by the law. Constitution, as noted above, earmarks law making power to be exercised exclusively by the Parliament/Legislature separating that power from the domain of the other two organs in order to make our polity work under Montesquieu's theory. So it is not the plan of the Constitution to confer the same power on the Judiciary 'again' to make law by introducing Article 141, because the same would jeopardise the working of the principles of separation of power in our State setup as it is envisaged by the Constitution. What is the necessity of two law making power centres?

The next important point is that Judiciary has no occasion for exercising power to interpret law except in case it is confronted with any issue that necessitates interpretation of the relevant law for adjudicating on that issue. So, Article 141 confer on the Judiciary the power only to declare the meaning of the law in terms of the intention of the law maker when it finds it not possible to do justice in a case without venturing upon interpreting law.

Therefore, to put on an interpretation on Article 141 that the word "declare" in it serves as a green signal for the Apex Court to make law when it finds any issue not covered by any provision of law is plainly otiose. Law

making is totally different a process from that of interpreting an existing piece of law. Court's power or jurisdiction is confined to interpreting and applying law. In democracy people's representatives only have the power to make law on behalf of the people. As judges are not representatives of the people, they have no jurisdiction to make law on behalf of the people.

Viewed from these points of view, by phrasing "the law declared by the Supreme Court shall be binding on all courts within the territory of India", Article 141 does only two things. One, it empowers the Judiciary to interpret law. And two, it takes in the system of precedents into our legal system. Noticeably, the Article exclusively refers to the binding nature of the Apex Court's 'declaration' of law on all Courts in India. Is it not apparent from the wordings of Article 141 that "declaration of law" by the Apex Court becomes "the law of the land" only in the sense that all Courts in India are bound to follow any law or any provision of law in the same sense in which it is understood and stated by the Apex Court in any similar factual situation in which the Apex Court set forth its view on the meaning of that law or provision of that law?

With all the appropriateness in the matter of power of the Judiciary to "declare" law, the difficulty dwells in the fact that the exercise of the power is not easy to be controlled or regulated. The only restriction as it is inherent in Art.141 is that the power is exercisable for the sole purpose of finding out the lawmaker's intention. Except for this, we will have to admit that the power is almost unbridled. And the above said restriction is again

a matter more likely to skid into the realm of subjective domain of judges. So it is open to misuse. Judges may misinterpret law. They may even make law in the guise of exercising power under Article 141. We have already witnessed many such occasions also. Self-restraint by judges themselves is the only remedy. Judicial restraint is of a higher order of self-restraint expected from our judges. Equally important is the keenness expected from the part of the lawyers in ensuring that judges exercise the power to interpret law without deviating from the rule of objectivity. Objectivity is the controlling ingredient in the matter of interpretation also as it is so in any other area of judicial process. Interpretation is never clothing the law with fabrics invented by judges alone out of their imagination. It needs to be the outcome of critical thinking imparted by judges and lawyers together.

Whatever may the restrictions or restraints imposed on the exercise of any power, ultimately its actual exercise and the output of the same depends to a substantial extent upon the personal volition, inclination, interest, exposure etc. of the person exercising the power. In that sense any power is inherently vulnerable to, and open for, misuse, mal-use or non-use. There lies the importance of electing/ selecting the most fitting and right persons for exercising powers. This is the essential and the ultimate duty people should perform without any lapse or relapse. The following topic on moral excellence assumes special significance in the context of what has been discussed

hereunto regarding misuse of power by judges or any other person invested with powers that cannot be regulated strictly by imposing restrictions.

Judges, law and moral sense

The quality to regulate one's own social behaviour is a rare virtue. It is the moral sense of man that makes him able to regulate himself. There cannot be any doubt that self-regulation is the most ideal regulatory mechanism that can be aspired for in the matter of regulating human behaviour. But a very few men of rare ingenuity only are seen winning in the art of self-regulation. All the rest fails. The reason for this failure appears to be that developing moral excellence is not an easy thing for every man. A morally sound person only is able to regulate his own character and behaviour.

It is when human beings fail to regulate themselves on their own on the basis of their moral sense that an external regulatory mechanism becomes a necessity for materialising peaceful social life. We know that a legal system is such an external device that is seen useful in the area, at least to some extent. However, even this usefulness is mainly an outcome of the elementary moral sense that is latent in human beings to do what is right and to avoid what is wrong. What legal system just do is to define what is right and what is wrong and introduce some dos and don'ts from the practical point of view of political life of man. Briefly, what legal system basically tries is to tap on the very same elementary moral sense of man for regulating man's social conduct.

Therefore, moral sense of man is the primary stuff in the building up of a legal system and state setup. It is when people are law abiding that a legal system produces positive results. And what motivates people to be law abiding is their moral sense. To be precise, it's people's moral sense that inspires them to be law abiding and loyal to their Nation. The apparent inference from the above point is that devoid of this primary stuff of man's moral sense his experiment with legal system and state setup would be lesser fruitful than he is able to experience it now.

Hence, no State can sustain for long only by enforcing law on the people if the entire or major section of its people are unwilling to obey law voluntarily out of their moral sense. If a State setup succeeds, it's only because at least a major section of its people are law abiding without any need to enforce law on them. This sort of relation between moral sense of man and the effectiveness of a legal system leads us to the next inference that moral sense of man is the principal factor that makes a legal system effective and sustaining. We may conclude that moral excellence of man may turn out to be effective even in a situation where law fails to produce its desired outcome or where it produces harmful results.

Moral excellence, as noted above, works as a natural self-regulatory mechanism in man and law as an invented external regulatory mechanism. We see that the mechanisms complement each other. Therefore, moral sense and law need to go together. Law cannot go alone

without being supported and supplemented by moral sense of people. If moral sense of common people is having such importance in the working of our legal system, then what much is not the importance of moral excellence of our judges in its working!

Therefore, let our judges be so excellent and strong in their moral sense that they are able to regulate themselves when law out of its helplessness fail to regulate any area of their functions. That is, if law is not able to restrain judges in any area of their domain, then their moral excellence needs to operate to regulate and restrain themselves and to keep themselves within their limits. Any judge who exceeds limits is a judge who is weak in his moral sense or virtuousness. Incidentally, where every human being in the society is able to self-regulate on the strength of his moral excellence is the ideal world man need to aspire ultimately for. If law wins in transforming and elevating society into such an ideal and sublime state... it's the real victory of law, because the ultimate aim of law and legal system has been 'imagined' to be the evolvement of society that do not need law for its regulation. Good imaginations never fail to shed lights on our walkway from darkness to lightness. We have been taught freedom and illumination to be our ultimate purpose.

Precedents system in democracy

Coming to the system of precedents, we cannot confuse our present system of precedents with that of the system of precedents known to the Common Law of England.

Of course we had no other go but to follow the Common Law system of precedents when we were under the thumb of the colonial rule. Independent we no more follow that system. We cannot, because with the independence we have become a sovereign democracy with a Constitution of our own. Every State power is controlled and regulated by the Constitution.

We have seen our Judiciary is devoid of any law making power. So, English system of precedents which has its roots in a system that recognised judges' power to evolve legal principles that would serve as legal rules governing the English people is quite inappropriate in the context of our system. No more we believe in judge-made law. Judiciary is not a source of law in India. We are men of statutory law. Even as to equity, we have codified it.

We look to the Judiciary for the meaning of our law when we find it difficult to understand the meaning. Simply, precedents of our Judiciary are repository of meaning of our law. It has no other connotation in the Indian context. By the operation of Article 141 of the Constitution all Courts in India are bound to read the law in the same sense in a similar factual situation in which the Apex Court decided to read the law in that sense. This only is the implication of our system of precedents post independence.

Doing complete justice

Article 142 of the Constitution which enables the Judiciary to "do complete justice" in matters pending before it

cannot be read in disjunction with what we have seen so far regarding the position the Judiciary occupies in the realm of administration of justice. The article is meant to govern any individual case where judges of the Apex Court find themselves helpless to do justice or complete justice either because there is no provision of law to apply to the situation or because the available law fails to meet the justice of the situation completely or when it works out injustice in that case. It is power of discretion in a glorified and extended form conferred on the Highest Court of the land in order to equip it with the last and final tool in the domain of justice to help it in its mission of doing justice. It being the Court of the last resort, for no reason it must fail in doing justice.

The power of discretion is congenitally connected with inherent power of Courts. So in effect, Article 142 recognises the inherent power of the Highest Court of our land to do justice, complete justice. No Court shall fail in doing justice, the Highest Court never. Our perception regarding inherent power is not that it's a power of the Court to do anything it prefers to do. Inherent power is to be exercised strictly within the limits and confines which our jurisprudence has fixed for it. We cannot imagine our Highest Court devoid of inherent powers, and that is why Article 142.

This fact relating to Article 142 ultimately communicates us the fact that Indian Courts cannot exercise any power including inherent power unless it is not conferred ('recognised') on it by the law of the land. It is a predominant fact that no authority in India can

perform any power not conferred on it legally. The mandate of Article 375 of the Constitution that all Courts and all authorities in India to exercise their respective powers subject to the provisions of the Constitution cannot be allowed to be a mandate of opportunism. Judiciary is also equally bound by the Article. Justice according to law is our mantra. There is no room or life for any third element which is able to step in between justice and law in our democracy. Making law and delivering justice cannot be simultaneous events. Making law and delivering justice cannot be allowed to be handled together by the same hands also. If the hands are united, justice itself will be injured and principle of separation of powers frustrated.

Independence, theory v. practice

Independence of an individual denotes freedom of that individual from any control or influence of any other individuals. What else is an institution other than just the collective of the individuals working for attaining the objectives set by the system for that institution? So freedom of an institution means nothing other than the freedom of the individuals operating the institution, i.e. their freedom from the control or influence of the individuals engaged in operating other institutions. So fundamentally independence, whether it is of an institution or of the individuals as individuals, means independence of the individuals from individuals.

Now, the fact that a person is independent by itself does not signify at all that the person is pure or perfect. Contrarily, if the person is not free from his own whims,

fancies, prejudices etc. his freedom has no importance. Rather his freedom may turn to be a menace for others or even for himself. What emerges is that independence of individuals, whether they are part of an institution or they are individuals as individuals, does not guarantee that the individuals concerned are free from their own whims, fancies, impurities, imperfections etc. Therefore, if individuals in control of an institution are not free from their own egocentric blemishes, independence of the institution is meaningless and it is counterproductive often.

So independence of an institution has two inherent expressions; one being independence from control or influence of other institutions and the other being individuals in the control of the institution are free from their own personal blemishes. Without any one, the other is meaningless.

Judiciary and its independence

Now, the word independence when used in relation to a democratic institution, it implies not only freedom from control or 'influence' of other institutions but also freedom of the individuals composing the institution from their own egocentric flaws and vices. Irresistibly, what the Constitution aiming at by envisaging an independent Judiciary is a Judiciary composing judicial men who are free not only from control or influence of men in charge of other organs of government but also from their own personal imperfections and impurities. Having such a Judiciary is the basic right of the people. The right is not a matter of choice left to anybody's whims, fancies or

deliberative devising. How many of our judges are independent in the sense discussed above is a challenge for the judges as well as for the people. Each judge need to introspect. Independence is not a personal right or privilege of the judges. It signifies their duty to remain independent in their judicial actions and deliberations without being controlled or influenced by other institutions and also without being affected by their personal blemishes. If they are not able to remain so, their clamouring for institutional independence of the Judiciary has no purity of intention. It is the constitutional duty of the Judges to hold themselves independent individually as well as institutionally.

Absolute independence implies absolute freedom. Together they give rise to absolutism or tyranny in a political State. So democracy does not envisage or entertain a concept of absolute independence in any form attached to any organ or to anybody in its political setup. Its concern is people and not any mighty men. Therefore independence of the Judiciary in no manner signifies absolute independence of the Judiciary or never that of its members.

Independence is not your absolute freedom or your freedom to do anything you like in any way you like if you are essentially part of a larger system. If each or any part of an integrated system starts to declare its independence, the result is destruction of the whole system. Fundamentally Judiciary is part of the larger system. As such it inherently lacks absolute independence. So if at all Judiciary exhibits any

inclination to be independent unabatedly, the conclusion is that it has misconceived of its own identity, position or setting.

Judiciary has its own earmarked domain no way signifies its 'absolute' independence even in that domain. It implies only that the other organs cannot trespass into the area exclusively reserved for it. Only in this sense Judiciary is independent in its own domain. Apart from this, like the other two organs of power, Judiciary is also originated and structured in such a way that it functions as a mutually contributing and mutually complementing organ in the setting of its correlation with the other two organs and their functioning, the ultimate objective of the entire effort being nothing but to secure welfare and wellbeing of the people.

Aim- integrity

Then what is the real significance of the long-familiar phrase "independence of the Judiciary"? We get an answer if we ask yet another question poised from a different angle. How much is the relevance of the integrity and incorruptibility of the Judiciary? So much is the significance of Independence of the Judiciary. Not too much more than that and never any less than that. Precisely, independence of the Judiciary is correlated only with the integrity of the members of the Judiciary. Ultimately, it is to ensure the integrity and incorruptibility of the Judiciary through all possible ways and means that the concept of an independent Judiciary is coined by the Constitution.

We have learnt that the hands of the Executive and its functionalities are behind almost all instances of denial or violation of fundamental rights and other Constitutional rights. In such instances the only rescue centre for people is Judiciary. If there is occasion for people to believe that Judiciary is likely to be influenced or won over by the Executive, then it is quite natural that people won't have faith or confidence in any remedy from the Judiciary. This suffices to make Judiciary inefficacious and that situation will boost the law violators. Nothing more would be required for the wrecking of the democratic setup.

To save the setup from this catastrophe is the other equally important objective behind the introduction of the concept of independence of Judiciary into our system. The concept endeavours to insulate the Judiciary from all external pushes, pressures and influences. In other words, it aims at enabling the Judiciary to remain invulnerable to such pressures or influences. This is in addition to the individual duty of every judge to remain independent in the sense discussed in some of the earlier paragraphs. Anyhow, viewed from the point of view referred to above also, we would be able to find out that the system is aiming ultimately to ensure the integrity and incorruptibility of our judges by insulating the Judiciary from external pressures or influences.

Keeping Judiciary so insulated from, and invulnerable to, the pressures and influences from the other organs of power is an essential feature of separation of powers.

Judges must be free from such pressures etc. in order to ensure that they are free to judge and decide impartially and independently without any fear or favour. The concept of independence endeavours to build up in the mind of the judges the attitude and confidence which would enable them to enforce justice regardless of, or without any fear of, consequences. The ultimate aim is to build up faith and confidence of the people in the Judiciary.

Not all

It is to be born in mind that independence of the Judiciary as clamoured for is not everything. It is not substitute for anything. Independence is one thing and competence and integrity of individual judges are yet different things. Suppose independence is achieved as dreamt. Does it imply that Judges' efficiency and incorruptibility are guaranteed? As noted above, in the case of judiciary independence without efficiency and incorruptibility is without any significance. Judges seem to be zealous to maintain independence of Judiciary only when it comes to the 'exercise' of their power, to their appointments, tenure, salaries etc. and seem to be least careful when it relates to the efficiency, competence, incorruptibility etc. of the judiciary. An independent judiciary without efficiency, integrity and competence is only an ornamental and burdensome judiciary.

Accountability and independence

Independence is not an answer for unaccountability. It is in no sense justification for Judiciary to remain

unaccountable. An independent judiciary does not mean an unruly judiciary without any restrictions or limits. Judicial independence is not to protect the interests of the judges. It has nothing to do with personal interests of the judges. It aims at protecting the interest of the society at large in the matter of administering justice to people. All the make-ups for independence are for making judges responsible to uphold their integrity and incorruptibility and to prove their efficiency and competency thereby.

Appointments negate independence?

Can there be any mechanism for appointment that would not anyway affect independence of the Judiciary? There cannot be any so far as the power wielders remain rampantly corruptible as they are at present. By introducing what mechanism of appointment independence of judiciary can be maintained unadulterated and full-fledged is a baffling question for us.

Is it the system of collegiums that made the judges in India notoriously corruptible? Can we sweep away the corruption in the judiciary by revolutionising the system of appointment of judges to the Constitutional Courts, rather to the Constitutional Courts only? These are also among the real questions that need answers. We cannot forget to note the fact that the Constitutional Courts are only the tip. Innumerable Courts working under them are the real places where justice is actually supposed to be imparted. Nothing to be corrected there? Is it not necessary to contrive a stronger mechanism for regulating

lawyers' profession also as part of purging the Judiciary? Viewed in the background of the neglect shown in the matter of making correction in these important areas also, the anxiety seen exhibited by the 'concerned' over the issue of appointments etc. reflects only their policy of making much ado over nothing.

There is parliament to disagree with judges' views and to correct the views by making law. Why Parliament did not do it earlier for correcting the views of the Judiciary on the appointments? If there are no justifiable reasons for the same, why judges alone are blamed for introducing collegium system? Why the decision by which the Apex Court introduced the system was not challenged before that Court? Commitment of our politicians and power wielders including judges to the causes of the people is reflected in these queries and the answers for them.

No ideal independence

If Judiciary's independence is a sheer or absolute basic feature of our Constitution, then who will be there having competence to appoint judges without anyway affecting Judiciary's independence since appointment is often a matter tending to affect independence at least in theory? Constitution does not aspire for anything ideal or imaginative. It aims practical and pragmatical things that can be achieved by practical and pragmatical ways and means. Anything that is called Constitution's basic feature also is never anything theoretical or just abstractions. So in the matter of Judiciary's independence also an Ideal or imaginative independence is not what is sought to be

achieved and maintained; an independence which is practical and pragmatical only is contemplated or warranted. Fools only need to believe or imagine that Constitution has promoted absolutism of the Judiciary by envisaging an absolutely independent Judiciary.

Appointing mechanism a check and balancing act

If vesting of unregulated power on the judges to appoint judges is not concentration of power in blatant violation of the principles of separation of powers, then what is concentration of powers and separation of powers?

No power centre is inferior to the other ones. Men at Judiciary, men at making law, men in the Executive are all own the same position or status. None of them can be taken for granted as untouchables or inferiors. Each power centre is under the Constitutional obligation to operate as a check-and-balance in the case of the other two in order to keep them on track in their functioning. A checks and balancing act can never be called an act of transgression or trespass. It will only be complementing the Constitutional mechanism. No organ is free to remain anyway free from these checks and balance mechanism in a democracy. So, independence of Judiciary does not mean independence of the Judiciary to remain free from the working of checks and balance mechanism in the system. We do not believe in infallible men who do not require check and correction.

Therefore, the Executive representation in the matter of appointment of judges is to be regarded as a checks and balancing act only. The wisdom, therefore, of the

Parliament in replacing the system of collegiums with a system having representatives from the Executive is only constitutional. It seems to be almost fitting and ideal also in the circumstances prevailing. Actually, there is an added qualification for the legislators and members of the Executive to take part in those matters. The qualification is that they are representatives of the people entrusted to ensure that Constitutional mechanism works properly. People's representatives cannot be scorned by anybody until they are removed from power by people. They are corrupt or not is the look out of the people.

Independence of judiciary cannot be the concern of the Judiciary only; it must be more a concern and obligation for the Parliament as well as for the Executive. However, when a representative from the Executive performs his role in the process of appointing judges, he should be guided by his Constitutional obligation in the matter and not by his narrow political interest or scheming. None is free from corruption. Rather, all are more or less equally corrupt. So, politicians are corrupt cannot be an answer for keeping them away from the appointment of judges when a proper mechanism for the purpose is devised.

Politicians are corrupt, so the politicians would try to influence the Judiciary if they are given a say in the appointment of judges. At the same time Judges are prone to corruption and they are not able to restrain themselves from being corrupt in the absence of a well monitored appointing mechanism. This is the real dilemma people are faced with. People cannot leave either organ

uncontrolled or wild without putting their interests at stake.

Therefore, mechanisms for ensuring working of checks and balances inter se the power Estates are unavoidable. The only way before the people is to maintain the mechanisms and simultaneously take on their shoulders the responsibility to keep vigil on their representatives, judges and all other power wielders and to ensure that anybody who would go against the interests of the people do not come to power or do not remain there. People are the ultimate remedy for every riddle in a democratic polity. They should learn this invaluable lesson and change their political and social attitudes and approaches in tune with this lesson.

Carrots and the donkey

Alluring post-retirement openings and luxuriation lying open for our judges at the pleasure of the Governments in power is the antithesis of the principles of independence of judiciary. How can we expect our judges to be independent or impartial if they are tempted to keep their eyes peeled on such luring opportunities while they work as judges? Even otherwise we are disposed of to ensure a decent retirement life for them at our expense. Therefore, it is their duty to restrain themselves from all other attractions. Their dignity as well as independence of the Judiciary demands it. Enjoying double benefit or multiple benefits need not be encouraged. A panel of retired judges inclined and able to serve must be prepared and kept by Governments and the order in the

panel must be strictly followed if at all the service of such judges becomes necessary.

Progress of our Nation

In spite of all the appropriateness and niceties and in spite of all the cares and precautionary measures in the form of restraints and limits so far we have found existing there in relation to the powers of Judiciary, members of the Judiciary have always shown the inclination and disposition to transgress and traverse their limits and to misbehave themselves by misusing or abusing their powers resulting in undesired consequences which ultimately crippled the progress of our Nation in the lines drawn up by the Constitution. In definite terms, members of the Judiciary (of course, including lawyers) are also equally responsible along with those of the Parliament and of the Executive for our failure as a Nation.

Sentimentally put, Judiciary has to be like a judicious mother caring and protecting her children, advising and admonishing them, praising and punishing them, all but with the intent to nurture them and to evolve them.

Good Hope

From the overall performance of our Constitutional mechanisms till now we learn that it's not paucity of any restrictions, limits or restraints on the exercise of State powers that occasioned the failure of our Nation. Nor is the excessiveness of the confinements on the powers the reason for the failure. The only reason for the failure is that persons vested with powers didn't do what they were required to do or bound to do. They deviated and went

wild. This is what happened with the Judiciary also. We as a people should have the mindset or mentality to admit and digest this extreme fact. We should learn to deal with and tackle this challenge in democratic ways. Better and best governance is the right of the people. And this right they are entitled to claim from all the organs of governance including Judiciary.

People are the seat and fountain of justice. Give people their due of justice according to their own will as reflected in the laws is the simple but sublime and onerous duty of the judges. If judges are fit and committed to perform this giving, they not only would be respected by people but they would be revered also by people. There is nobody who fulfils the promises they give to the people. People don't want to tolerate this. Our people go behind God-men because they think that omniscient God is free even to break His promises for the goodness of the devotees. People would 'betray' and shed their God-men down and come after you if you actually work for them.

A vigilant people and an equally vigilant Judiciary are powerful enough to tame and docile all the unruly, and no doubt the representatives of the people too. People must perceive and recognise the significance of them becoming vigilant and them becoming powerful in that way. Our judges should acknowledge their duty to the people and prove their commitment to it. Together people and Judiciary would prove democracy fruitful and successful in every aspect bringing all-round welfare, wellbeing and prosperity to all people. The two have miracles to perform with the aid of the powerful tool, law.

It is for us to optimise the present mechanism as it is in its performance first. That is the mending we need first. Replacing, altering etc. of the present system or any of its subsystems are just questions of perfections and imaginations relevant, if at all they are, only after the first phase of optimising performance of the present system is achieved. Experimenting changes after changes on the false assumption that the problem is with the structure is not going to make anything better, we have learnt. It only helps to shift the blame and thus to save the blameful. So let us exploit the optimum possibilities of our present body first.

The start with the hunger issue

Hunger is our first issue really. That was seemed to be the first issue with the politicians also for some decades following independence. They felt they cannot take people along with them without that issue in their agenda because at that time we were conscious of, and concerned about, the plight of the multitude of our starving countrymen. But the politicians left the issue there decades before because they learned that the empty-stomachs' politics was unnecessary for their flourishing. They learned that lesson from their experience that the miseries of our starving people no more tormenting us. We proved "every people get the government they deserve". Thus politicians betrayed us for the first time on the hunger facts. "Putting others first" is the most essential and the highest of the virtues politicians need to have. They lack very much in that virtue is actually the most unfortunate crisis we face and we need to

address. Our politicians think politics is for their own thriving, it is no concern of people.

What is patriotism or nationalism if it is not love for your people? What is patriotism or nationalism for if you don't have the heart crying for your people starving? Yes, we do beautifully address a hunger. But it is not the hunger for food that we address. It is the hunger for money, the avarice of the millionaires and multimillionaires that we address. And at the behest of our politicians, the haves or the moneybags of the country have succeeded in shaping everything in the country for subserving their gilded and princely agenda. Welfare state, social equality, economic equality, socialist aspects of welfare state etc. are all nonsensical phraseology is the suited invention. The word 'socialist' in the Preamble is absolutely redundant. Let it there be just for the sake of poetic rhythm of the Preamble. Securing economic justice to all is no more anybody's constitutional obligation. Notably, India's soul no more dwells in its villages. From there it has gone in search of bullet trains and supersonic flying. Grama Swaraj is, therefore, definitely conformism and of the past.

In the economic process that makes the rich richer and richer the poor will get some pittance or subsistence as alms thrown by the rich. For the poor the pittance or the subsistence is 'big money'. Getting this big money is the big economic development for us now. So make the rich more and more rich and get the 'big money' in return for the subsistence of the poor. This is the economics benevolently shaped for the poor out of the benevolence

of the rich. Let us celebrate and accelerate that economics. We have streamlined everything for this purpose, everything is misdirected. Everything is merchandised, including our souls. Merchandising brings development is the formula we have invented and adopted now, though we experience merchants only win. And merchants mostly remind us of the 'Venetian character'.

We should memorise ourselves once again about the plight of our hungry men and infants dying hungry. Hunger is actually our biggest national calamity. Therefore hunger should come back as our first national issue and priority. We should work for the same in every possible democratic ways and means and prevail upon our politicians in this regard. If we succeed in that direction materially, it will definitely reshuffle the whole priorities now in prevalence. That will force the power wielders to redefine "development" and "progress" from the proper perspectives and redirect the country in the right direction. That may promise us a better tomorrow...at least with food for the hungry.

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CHAPTER - 6

Democracy, a one-man show?

Democracy, a one-man show?

Is not projecting a person as Prime Minister Candidate illegal and unconstitutional?

This discussion is an attempt to find an answer to this query. The query took shape when it occurred to the mind that the demoralised election process is the root cause of all our failure as a Nation. Now, if huge majority of our people are living in abject poverty and untold misery, definitely, it is our failure as a Nation to the core. India is home to the largest undernourished and hungry population in the world. The country is still home to one-third of the world's poor.

Public election is the device that gives life, meaning, continuity and longevity to democracy. It's do-or-die for democracy. Anyhow, in the Indian scenario that process literally ends up in highjacking people and in sabotaging democracy and Constitution. Electioneering is gimmickry

for our political parties. They don't believe in forming free and genuine public opinion. They just need to mobilise mob. They don't want to lead people, they mislead always. They aim to desensitise the voters, not to sensitise them. They want people to be blind enough to follow them blind. For them election and electioneering is nothing but manoeuvring and jockeying people.

This way electioneering is the breeding ground for all evils that demoralise the entire polity and the people. Politicians learn to lie and pretend, learn criminalism, rowdyism and all varieties of misbehaviour and villainy as part of their sole agenda of grabbing power under the guise of elections. Naturally, all these evils percolate into the society and contaminate it altogether. It is the politicians themselves who harvest out of this contaminated situation. And this really is the vicious circle our people are entrapped in. Therefore democracy is at a standstill in our country. What we have is a namesake democracy.

Interestingly, none of the political parties would disagree with the above narration of facts. The paradox is that each party makes a definite claim that it alone is a party with a difference, clean from all those dirty things and practices. Each party claims that all other parties are rotten as if all the fine people in India have flocked to that party leaving no fine man to join any other parties. Therefore they don't have respect for the opposition. They don't know the significance of respect for the opposition in democracy. They are yet to learn it; no, they are forgetting it for their foul politics for power. They are not

for people. These states of affairs prevailing in our country cannot be allowed to be continued. Things must change. Election and electioneering alike must become transparent and truthful in every respect as the first step towards purging our political parties and their politics. Our parties need to start to learn that politics in democracy is not power politics and that in democracy power ultimately rests with the people themselves.

Anyhow, deluding people by false and hollow promises and mesmerising people by showcasing certain leaders as idols claiming possessing extraordinary capabilities are two electioneering trickeries generally employed by our parties for misleading people. A heroic leader who is able to carry out all the promises a party makes to the people, a fallacy as big as the promise. To explore these sorts of fallacies for unearthing the truth behind is of enormous relevance especially when it relates to the Prime Minister's position.

Charisma and the Indian Constitution

Sri Ram, Sri Krishna, Christ, Prophet Mohamed… all were, no doubt, among the perfect, holy and charismatic personalities the world has ever seen. They were all personalities with all the potentials even to change the entire world, may be. But, can we, on that rationale, throw away our Constitution, the manifesto of the Indian people, and our Constitutional mechanism by opting to choose the very same Sri Rama, or Krishna, or Christ or Prophet Mohamed aiming to 'big-change' our country? Again, can we permit them to go against or go beyond the Constitution in case any one of them is chosen by us to

be our Prime Minister to head our Council of Ministers? Still, are we prepared to suffer subversion of our Constitution at the hands of any one of these persons on account of their magnetism or omnipotence? If we are not prepared for any of these eventualities even for the sake of these 'divine' persons, then what is the significance of the charisma or individualism of any 'ordinary' person proposed or projected to be the Prime Minister of India whose power is already drawn up and limited by the Constitution?

Prime Minister, a decorative captain

Suppose any one among Sri Rama or Sri Krishna or Christ or Prophet Mohamed is elected as the Prime Minister of our country. What magical change the elected one will be able to bring about in the country if his election is subject to a strict condition that he should not make use of his unusual powers in his performance as Prime Minister and that he should perform that work only in accordance with the Constitutional mandates and the law of the land? Even though all of them are magical persons, we will see them cutting a sorry figure in their venture as Prime Minister of India because of the simple reason that collective responsibility of the Ministry is the catchword and any individual agenda of the Prime Minister has no superior position or significance in our Constitutional scheme of power.

If the team is not good, captaincy is buffoonish and for a good and proficient team captaincy is an ornamentation or banner only. Then, why the people, the politicians, the media etc. are all after the ornamentation and banner,

especially while Art. 75 (3) of the Constitution provides that the Council of Ministers shall be "collectively responsible to the House of the People" signifying that Prime Minister is only one among the collective? Are we really sleeping or pretending asleep? Is anybody engaged in lullabying us into hypnotic sleep? It's late that we open our eyes and open ourselves up to see what is happening around us. Prime Minister is at the most "the first among the equals", constitutionally. 'Equals' implies all equal in efficiency and excellence. 'First' implies first when counted in numbers. Is there anybody who claims that Prime Minister is more than "the first among the equals"? If there is anybody, can he substantiate his points by drawing from the Constitutional provisions and democratic principles? Does he think democracy is autocracy in disguise? Democracy has no comparison. It is unique as a system of government. It belongs to people, not to any individual in power or out of power.

Hence, democracy is not a one-man solution, it is against it. It believes in collectivity and solution by the collective. And 'the Collective' cannot be a nugatory. If responsibility is collective, any decision of the collective must be decision of all members constituting the collective and all members are answerable also for their collective decision. Therefore, Prime Minister has no power on his own to take or implement any decision touching the life of the people. Prime Minster is not a shepherd and Ministers not his lambs. Actually democracy emerged out of the despondency and desperateness brought about by the bitter experience people suffered by the onslaughts of one-man or few-

men solutions. There is no scope or space for another experiment with any one-man solution. Democracy is not a one-man show. You cannot personalise or individualise democracy. It is not heroism or hero worship. Nor is it image worship. It's people's participation in the governance, not alienating them from it. Decentralising power is thus much a significant process in democracy. Democracy is not desolating individuals for the sake of society; it is reaching out to all individuals, or taking the whole people along with, for the sustainability and wellbeing of the entire society.

Rule of law & political parties

Our country is not going to be bettered by the sweat of any single person, whatever be his capacities, capabilities or claims. We neither believe in any one-man-rule, nor even in any 'man-rule'. As stated, democracy is neither autocracy nor oligarchy. We, the admirers of democracy, want only responsible persons as 'our representatives' with the will to ensure that the country is ruled by the law, the law which is the will of the people. Democracy never fails. If at all it fails, it is only when people fail in electing or selecting proper persons as their representatives. But the fate of the democracy is that people often fail in choosing fit and proper person for wielding power. Personality cult is enough and sufficient to make people unresponsive and slumbering.

Electing representatives who are able to ensure, abide by, and subjecting themselves also to, the Rule of Law is the duty and responsibility of the people themselves. Helping people in fulfilling or carrying through that

crucial responsibility meaningfully and fruitfully is the greatest political movement or activism that any Indian must participate in for changing the face of India. Whether Indian people have ever been successful in electing the best or at least better men to wield power for them is a serious question deserving a true answer. If the answer is in the negative, then, why and who is responsible for that failure? Who else, if not our political parties? What else, if not their unaccountable deviations? None of our Governments has been successful even in the elementary governmental function of collecting tax.

Earthquakes, tsunamis, floods…all these catch our attention and we are shocked to hear the death toll. Compassionate, our shock is natural. But why are we so indifferent to the fact that starvation and malnutrition claim the lives of more than 3000 Indian children every day? India is the home for one-third of world's hungry people. What are we planning for and what we mean by development? What are the real issues India faces? We are on slumber while our fellow nationals are dying hungry. They don't have voice. Nobody is there to raise voice for them. Hunger facts no more our issue. Our mental asylums reveal how insensate we are.

What is wrong with India? Backwardness or underdevelopment of India is never due to any fault of the Indian people. India is rich in good quality human power as well as in the availability of natural resources in abundance. Culturally Indian people are not behind the people of any other country. And no scheme for development has been pointed out as failed for a reason

that can be attributed against the people of India. Who then, if not politicians, is responsible for all these? Are they not accountable for the starvation of millions of Indian people and for their death due to starvation? If a criminal who commits murder of a single man is liable even to be hanged to death, are not these politicians liable for massacring on account of starving hundreds or thousands of people into death?.

Constitution is to guide and invigorate the wise and virtuous sitting in authority zealously to serve people and is not to serve as a device for the foolish and the wicked who infiltrate clandestinely into power for their self aggrandisement. People must be on guard to see that the foolish and the wicked are not usurping any seats of power or authority. They must be on guard to see that none other than the wise and virtuous are put in power. Once the foolish and the wicked ones get their way into power, a vicious circle is developed from which it is most difficult to get out of. Men of character and integrity and capacity and competence only must be elected/ selected to any and every position or authority, whether to wield executive, legislative or judicial powers.

Why idols?

An India which is dependent solely on the life, wellness and wellbeing of a single mortal human being from the country? Is this our solution for our country? Who invented and introduced this most debile solution for us? It is never the Makers of our Constitution. And it's no way a Constitutional solution, the Constitution itself

witnesses. Then, how and why an extra-constitutional or unconstitutional solution?

The simple and naked truth is that any person who is qualified to be elected as a Member of Parliament is equally qualified to be chosen as the Prime Minister of India. With the backing of the majority of the voters of one constituency, Prime Minister does not, and cannot, claim to represent the whole country. Then, why our political parties go after, showcase and propagate idols to decorate the Prime Minister's seat? They are just playing trick on the people just to usurp power exploiting on the ignorance and innocence of the people. Or else, are the political parties revealing a fact that except the idols they showcase, all others in their parties are persons with no stuff? If things are so with them, then no doubt, Indian masses have no salvage from their never ending sorrows of poverty and misery by the work of any of our political parties. Any one of them (the party men) is 'great', does not make any difference at all.

If any leader believes him to be the fittest or the worthiest person in India to become the Prime Minister of India, is he different in any respect from the man who raised the egocentric slogan "I am the world"? We know we don't have any leader from any party without having any rivals at all against him from within his own party? Majority backs him may be his only advantage. Either the rivalry is buried within the party by employing tactics multifaceted or the rivals 'accept' the majority view is that what happens. But that doesn't mean that the leader is free from any of the blemishes noticed by the rivals. So

the true fact is that no party is in a position to project, otherwise than unfeignedly, an impeccable or completely neat and clean person who is enjoying the full support of the entire party men as a leader. Therefore if any leader from a party is projected as an extraordinary one, it is only a feigning adopted by that party to deceive people, because the leader so projected is always a leader who is not completely acceptable even to the party projecting him. That party is imposing such a person on the people for the purpose of electioneering. After all, is there any leader in any party who concedes that he is not fit to adore the seat of the Prime Minister or for that matter any other seat of authority? Leaders are either inventions of their parties or swallowers of their parties. There won't be any dearth of leaders. Leaders will come one after another with the same claims of charisma and all. But what we are lacking in, actually, is not charismatic personalities. We are lacking in committed persons, persons committed to the cause of the people.

No election for the PM

Don't our political parties know that Indian voters do not enjoy the privilege of electing their Prime Minister and that electing Prime Minister is the internal exercise of the political party which happens to bag majority in the public elections? It is for the MPs of the winning party to choose the Prime Minister, and people have no role to play in that affair. Then what is the justification for all the luxurious and pompous propaganda for the Prime Ministership of any particular person? If the same is not for misleading the people, then what is it for? It is actually

electioneering by deluding and deceiving the people and making mockery of the sanctity and significance of the democratic process of polling. Are not our political parties driving us away from democracy and its sublime principles by adopting and involving themselves in all these gimmicks and thereby sabotaging the Constitution?

We cannot differentiate between the effect the commercial ads we watch on TV had on people and the effect the electioneering propaganda had on them. Both take us to fanciful worlds cutting us off from this world and its realities. This is what the politicians scheming for. Anyhow, we are not apolitical. We do not abnegate politicians or political parties or their finer ideologies, because our democracy is moulded in such a fashion that it cannot hold up without political parties. And we have great politicians to whom our Nation is very much indebted to. We are antipathetic only to the misuse and abuse of political power by politicians for their self-aggrandisement and for enriching themselves. We legitimately demand a good degree of selflessness and service mindedness from them. It is our right. That's all. A smaller degree of sacrifice will definitely add to the flavour.

Now, certain individuals are able to win people's minds over is never the victory of the people or of democracy. It actually indicates the breakdown of democracy and defeat of the people. A people sustaining on emotions and leaders gambling on the emotions of the people are equally unfit for democracy. A leader is not a giant in democracy; he is not extra-human or

supernatural in democracy. Development and wellbeing are the right of the people; they are not matters depending on the mercy of any leaders. Further, some progress is not what the right of the people; all-round and optimum progress is their right. People are grateful even for a little change or progress shows their innocence and superior culture. That innocence and culture cannot be exploited for defeating the rights of the people. Promise of progress and wellbeing unfulfilled for decades is what we have been experiencing in our country. People are being asked to pull on their life on hopes forever. These things need to change. Freebies politics is the worst kind of politics because it is the worst form of exploiting people's indigence, ignorance and innocence. No politician gives anything free to the people out of his pocket. He spends people's money and at the cost of the people he creates a fake impression that he is benevolent. Politicians mostly targets on votes, often solely on votes. They want to turn each of their acts and each of their words into votes. They won't do even any little thing or won't utter any word worth a word if the act or the word is not good for generating votes or for influencing votes. Myriad and diversified is their ways for getting into power.

By the way, if a person who is chosen as Prime Minister by a party after that party's victory in the elections without projecting him earlier as its Prime Minister candidate succeeds in performing exceptionally well in his capacity as Prime Minister, he would definitely be 'counted' by the people as their real leader and they won't allow him to be out of power or be removed from power even for a single day. He proves himself and people approve him.

That is the real politics. Let our parties go for the real politics.

Power of the ballot

Political parties, if they are for the real politics in the sense that they are truly committed to people's cause, they must recognise, realise and admit that the ballot in the hands of the people is the most (but the only, too!) strategic weapon powerful enough to show how mighty the people are in the democratic set up in our country. The basic political responsibility of our parties in the present Indian scenario is nothing other than to impart elementary lessons to the people to sensitise them to recognise for themselves how sharp the ballot in their hands is and to enable them to use it sharply in order to alleviate themselves from their never-ending miseries.

Our political parties should learn also that the ballot is definitely sharp enough to tackle, anchor and contain any challenge our democracy faces. Definitely, the ballot is going to tame 'even' our political parties and make them people-friendly in the real sense because once people learn to use the ballot sharply and sensibly political parties will be having no other go.

India-to-be, the dream child of the Constitution

Do we want any person in power in our country with mammoth magnetism which is bigger even to outsmart our Constitution? What India must be and what India must evolve into or develop into has been designed and approved by the Indian people by accepting the Indian Constitution as their manifesto.

We do not need, or we cannot afford to have, any alternative manifesto for the governance of our country or for shaping the course or quality of our life as citizens of our country. By the Constitution we have forbidden to ourselves all alternatives even if any such alternative at all is available with anybody. So definitely, we are bound only by our Supreme Document, the Constitution, and not by any Scriptures or Epics in our political life. It seems we conveniently forget, or fail to give due regard to, this vital aspect of import in our political life when we engage ourselves in hot ideological discourses as to our how-India-should-be-like deliberations.

There may be wonderful ideologies powerful enough to conquer and emancipate the whole world. But we don't want any of them to usurp the place of our glorious Constitution. We don't want any of them at all, particularly if they are not amenable to stay and work subservient to the Constitution which is the supreme and paramount ideology and guide 'legally' adopted by the people of India for the governance of their Nation. Any attempt to substitute the Constitution by any other manifesto or ideology by any means is nothing but subversion or treason. If any party with any such manifesto or ideology have been given recognition as a political party, or if any such party has come to power, then all those have happened but without sabotaging the Constitution. Such parties are parties with hidden agendas. Somebody with a hidden agenda is the most dangerous ones because they are wolves in sheep's clothing. They may go to any extent for materialising their hidden agenda by keeping themselves among the sheep.

Constitution is our measure and touchstone. Constitution is the first and the last word for us, not any parallel ideology or any belief system, in our political life. However, our people are not conscious of this fundamental fact influencing, or supposed to be influencing, their life. Effort of our political parties has always been to overshadow the Constitution by thrusting their 'own' ideologies to the surface and thereby causing the Constitution go underneath and making it slip into oblivion. And this is the main reason why people are ignorant of their Constitution and of what it means to them. Actually this ignorance of the people is the ignorance that is massively exploited by the power wielders and politicians for manipulating people for achieving their selfish ends. Therefore it is evident that what people are lacking in most is Constitutional Literacy which is crucially important than linguistic literacy. Only through Constitutional Literacy that people can be awakened to the reality concerning our country. If that literacy is achieved, people would prove they cannot be fooled no more by anybody.

Therefore, imparting lessons on the Constitution to, and spreading the message of the Constitution among, every people, in all walks of life and from every nook and corner of the country by all possible ways and means is the activity that is to be resolutely undertaken by every Indian who is aware of the importance and value of the Indian Constitution to the people of India. Here is a challenge for our political parties- is any one of them ready to announce that they would enlist the target of achieving Constitutional Literacy of the people as one

among the items in their next election manifesto? See, it's not a difficult task if you are ready to undertake the challenge, because our people are a people who are heading towards a cashless economy now! What about making reciting Preamble of the Constitution also compulsory along with our compulsory standing up for honouring our National Anthem before the reels of films start to role in our cinemas? It seems it would also help us book the unpatriotic or the disloyal among our people very easily for the really defendable reasons!

As stated earlier, people of India have already made up their mind as to how and what their great country must be like. Their hopes, their dreams and their aspirations regarding their country, they have crystallised and imbibed into the Constitution. What remains is only to translate those hopes, dreams and aspirations into reality through our representatives by ensuring that our lawmakers, men at Judiciary and men in the Executive act properly and with sense of responsibility for materialising that goal. Therefore, what our political parties need to do is only to approach the people with manifestos showing them how they are going to achieve Constitutional goals for the people. Parties inter se, nothing other than their run to prove how one of them is going to outsmart the other or the others in the accomplishment of the constitutional goals is only relevant. Which of our parties approach the people with such manifestos fully adopting the dreams of the makers of the Constitution as their agenda and ideology for "making India"?

Our political ideology

'Indian Constitutionalism' is our 'political ideology'. Our dream is simple, a dream realisable by simple means by simple men with a solemn and sincere aspiration to transform our Constitutional dreams into reality. We do not need any magical person to do this for us, and there is no guarantee that such a magical person, let alone the political party which he represents, will have the degree of sincerity and dedication to do the same for us. One Indian changing the lives of 1.27 billions of Indians! A wonderful dreaming, but one that never comes true. Democratic people do not believe in a Messiah or Deliverer who would save them. That is why they formed themselves into a democratic polity with realistic plans and schemes to be put into practise by collective human effort.

Again, Prime Minister is only a representative of the people of his constituency alone. We must learn to familiarise ourselves with the curious and invincible fact that Indians do not exercise their franchise to elect a Prime Minister for their country. An Indian elects only one Member to the Parliament and one Member to the Legislative Assembly. So projecting a person as Prime Minister 'candidate' is a deception, deception practiced on our illiterate, ignorant and innocent people with the intention to influence their votes. This is against the very fundamental principle and practice of free franchise. Democracy without 'free' franchise is not democracy. Let our parties select the most capable person, may be a magical person, in their party to occupy the seat of the

Prime Minister, but only after they win the public elections. Why are they not ready to wait until then? Do they want to 'save' India and its people at once?

For apparent reasons as discussed above, one cannot be mistaken if one holds the view that projecting a particular person as 'Prime Minister Candidate' is illegal and unconstitutional. The practice is, definitely, liable to be litigated and condemned if we want to drive our democracy in the right direction in order to reach our dream goal of a SOVEREIGN, SOCIALIST SECULAR, DEMOCRATIC, REPUBLIC of India, ensuring us JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and promoting among us all FRATERNITY assuring the dignity of the individual and the unity and integrity of our great Nation.

We have seen many schemes introduced in India by governments in the names of their Prime Ministers. If the role and position of an Indian Prime Minister is as revealed in our discussion so far, what is the logic and legitimacy of launching governmental schemes in the name of Prime Ministers? It is just employing the branding technique on the people just like that technique is cunningly and wonderfully employed by traders to market a product which has no real built-in value or use. When it relates to politics, it is either the technique of branding one man through one political party or branding one political party through one man on the brains of the people. After all, no Prime Minister launches any developmental schemes in the country using his own

money. Each penny they use belongs to the people. People's money in their name for their propaganda! What is the legitimacy?

Whatever may be the magnitude of development activity that has been carried out by any Government, there is nothing unusual in it than it being the only fact that the Government has discharged its duty to the people by using resources and money belonging to people. Making use of that fact (development) as a piece of propaganda for the Government through commercial-like advertisements by misapplying people's money again is too much. There is no justification at all for that. It is just plundering public money. Actually, it is when a government fails to bring about all-round development which is capable of producing wholesome change in the quality of life of the people which people are able to experience right away in their day-to-day life that the government turns to propaganda politics or brainwashing politics by promising or claiming 'unbelievable' development.

The political theology

By adopting secularism as our 'political theology', we have poured the essence of all the scriptures into our life as citizens of our nation, of course, without forgoing the liberty to pursue our religious or spiritual seeking in our personal life. Even our Constitution which is the creation of the modern time is vulnerable for interpretation ending up in anomalies, often. If this is so, then what about a situation where we are constrained to look into, or to exert to interpret, those mystic Holy Scriptures or Epics or other

ideological texts originated centuries back or during ancient times in order to find out a solution for a deadlock or riddle that may come across in our present day life as a political Nation?

So let us hold on to our pristine CONSTITUTIONALISM and search for and elect for us true representatives from among ourselves- representatives with the will and wish to instil the CONSTITUTIONALISM into the polity and political life of our country, of course without encroaching the 'lakshmanrekha' drawn by the Constitution between personal freedom and power of the State. Political parties and other workers and volunteers as well who stand for and fight for the cause of our people with INDIAN CONSTITUTIONALISM as their political ideology and agenda and Indian Constitution as their Supreme Text- this is what we desperately need more than anything else for saving us at this moment.

■

Facebooking...

These Facebook notes are extracted here with some editing assuming that they may complement and make the issues dealt with in the earlier part of this book a little more comprehensive. Along with the notes, some comments hit by the author are also extracted

I

My lord, your lordship: How to call our Judges- what the Apex Court divulges?

Hon'ble Supreme Court correctly says its judges should be addressed in Courts in a respectful and dignified manner and it squarely declares it is not compulsory to call the judges "my lord", "your lordship" or "your honour". This is purely Impersonal and objective a statement by the Hon'ble judges on the issue realising and duly recognising the dignity of their High office which by its very nature commands and merits respect and dignity, the maintenance of which is a serious duty of the lawyers in India. It sounds our judges are free from predilection towards self-importance.

Now, "My Lord" and "Your Lordship" are relics of colonial past- the policy of the lawyers in India in the matter finds expression in Chapter III A of Part VI of the Bar Council of India Rules. Lawyers' choice is clear from the Chapter.

Given this situation, the dilemma pops up when the Hon'ble Judges opt to opine "You call (judges) sir, it is accepted. You call your honour, it is accepted. You call lordship it is accepted.

These are some of the appropriate way of expression which are accepted" and leaves the addressing issue again to the lawyers' choice.

Is this not a situation that legitimately gives rise to these questions? - (1) Does the Apex Court fail or refuse to recognise the legality of the Rules Framed by the Bar Council of India in pursuance of the provisions of the Advocates Act? (2) If the Hon'ble Court accepts the legitimacy of the Rules, why does it decline to enforce that law? (3) Is the reason that the Court cannot accept negative prayer sounds to be a good reason for declining the prayer while don't kill, don't steal, don't trespass etc. is our law? (4) Is it that the Court does not agree with the view that "My Lord" and "Your Lordship" are relics of Colonial past, words denoting servility and servitude? (5) Are our Hon'ble judges not really free from predilection towards self importance?

Comments:

- *We cannot put a full stop after a question mark. We must find an answer and then put the full stop. We need not be desperate, because in our democracy we are not without an answer or solution for any problem we may face. Democracy is self sustaining and self corrective a mechanism. It only demands us to question, question and question everything going and growing against its (democracy's) growth and sustenance. This is the most effective and fruitful way of correcting the faulty. So, the only thing is that we should not give up being responsive and questioning, for there is nothing which is able to win through or win over public opinion in democracies.*

- *I find it difficult to view the issue to be that simple. How can the word 'sir' in one's mind naturally become "my lord" or "your lordship" when it is articulated? The explanation is only a sophistry. The real issue, I feel, is how our judges like to be called while in Court and how lawyers choose to address the judges. See, the law is as provided in Chapter III A of Part VI of BCI Rules. Why the lawyers reluctant to follow the Rules governing them in the matter? Judges must be respected, no compromise at all. But, can we have Law Lords in our democracy?*

- *Sidhi, yes, respect is an attitude.., a word or a linguistic expression may not reflect respect if the person using the word or expression really didn't mean to. If so, being adamant on certain words do not make much sense, if not any sense. Then why is this exercise? Open disrespect is distraction, so it cannot be tolerated, because it affects the outcome. This, it seems, is the relevance of respect from the practical point of view.*

II

Judiciary and respect for the judges, again (viewing it from a different angle)

Before cutting my heart open on the surgical table, a surgeon needs to cut off and eliminate all sources and chances of distractions which may affect his concentration because if his concentration is affected anyway I may not be able to wake up from the table. We know, concentration lies at the root of all human actions. Concentration lost or fragmented, no human

action is successful. Act performed without concentration often leads to catastrophe.

Dispute resolution, which involves recording evidence, hearing arguments, hot deliberations etc., is the function of the law Courts. Maximum concentration is absolutely necessary for this. Respect generates an atmosphere where all sorts of distractions are minimal. This generation of congenial atmosphere to work in seems to be the practical significance of showing respect (i.e. expressing physical signs and symbols of respect). Cordiality also is spontaneously generated this way. Conceiving the importance of respect as above in the day-to-day functioning of the Courts, we may go even to the extent of making law to ensure and enforce respect. (We must view this institutionalised respect distinguished from attitudinal respect)

Does respect has any other function to perform than generating this congenial atmosphere and cordiality for better outcome, creativity and positivity, especially in a democratic set up where all are reckoned to be equal? Finding an answer to this question is likely to help us conceive the 'respect controversy' in a proper perspective.

III

Contempt

Mr. Johnson's concern and anxiety is the concern and anxiety of any person who is convinced of the significance and relevance of the vital role Judiciary is assigned to perform in our setup. His belief in, and his love for, the Judiciary is plainly understandable and is to be appreciated greatly. He echoes the faith and belief of

the people in the Judiciary. People still have that faith and belief because they believe that our judiciary is committed to its assignment and mission. I feel it pertinent to ask a question here: are our men at Judiciary (which integrally includes lawyers also) cognizant and mindful of the mission they are in charge of? We cannot close our eyes, we have great judges and great lawyers. But it's not an excuse for refraining from evaluating the overall output of the judicial system, because responsibility for the end result is collective. My point is, if it turns out that the judiciary is not active and dynamic in all aspects of its assignment and mission, can we encourage it to be proactive only in the matter of contempt? It is not wise to arm a person even with defensive weapons if he is not infused with the spirit to carry through what he is charged with. I just quote what Justice Markandey Katju 'provocatively' remarked: "I submit that the law of contempt of court can be made certain once it is accepted that the purpose of the contempt power is not to vindicate or uphold the majesty and dignity of the court (for it is automatically vindicated and upheld by the proper conduct of the Judge, not by threats of using the contempt power) but only to enable the court to function. The contempt power should only be used in a rare and very exceptional situation where without using it, it becomes impossible or extremely difficult for the court to function. In such rare and exceptional situations, too, the contempt power should not be used if the mere threat to use it suffices."

IV

Lawyers' right to go on strike

Boycotting courts by lawyers (for whatever reasons) is unprofessional, unethical and it amounts to professional

misconduct- this seems to be the law and the settled legal position in India in the matter of abstinence from work by lawyers. The legal reasoning backing the position may be sound or not, well founded or otherwise, but it is the law relevant for the time being. If lawyers find that they are wrapped up with a bad law, they are justified only in striving to bring change in the law through legal means and they are not at all justified in violating that law on the pretext that it is bad. Same-feather-birds-feeling is good, welcoming, desirable and often indispensable, but outgrowth of that feeling taking the lawyers to the brink of breaking the law governing their profession is just undesirable and unwelcoming. However, fur-of-the-moment-reactions are justificative sometimes, of course not always.

Lawyers, along with judges, are indispensable part of our judiciary and legal system. If the system needs those rare men of nobility, dignity and integrity to serve the system as its lawyers, it (the system) has to take on its shoulders the duty to see that lawyers' nobility and dignity is not abused in any manner and that their self restraint and patience is not put to test by anybody by resorting to any sort of ill-treatment or high-handedness.

Lawyers are the only professional group which has been taken off from it the 'right not to work' in protest or as a means for bargaining. This deprivation must not work out to be a handicap for them in their seeking for solution for problems they face or in redressing their real grievances. Instances of abuse of lawyers by presiding officers in the open Court in the presence of their clients and general public are not rare. Often the complaining lawyer himself/herself is victimized on account of the 'complaint'. Mutual understanding and mutual respect between the Bench and the Bar often remains a dead letter, viewed from the point of

view of lawyers. Lawyers repeatedly reminded of their position as officers of the Court when their duty as such is the subject of the debate. And at the same time, their position as such officers seems to be conveniently forgotten when the issue relates to any complaint of misdemeanour or misbehaviour from the side of the Bench or from any other direction. Can it be allowed to be the plight of the lawyers? If this is their predicament even at their work place, can we blame any other for committing any assault or atrocities on the lawyers?

But, what about lawyers, are they up to what the system expects from them? Introspection works better than any for them.

Comments:

- *Of course money does matter, but beware, it is not the only thing that matters, rather it must not be the only thing that counts or that decides the destiny of the individual or of society. If we all consider money as the most precious thing, we are the lost ones….*

- *A lawyer cannot violate the ethics and etiquettes of the profession for the sake of money his clients pay, because his profession is regulated by law and he is bound by such law. How can he belong to the lawbreakers' lot? According to the relevant BCI Rules, it is his duty to fearlessly uphold the interests of his clients even without regard to any unpleasant consequences to himself or to any other, but he is allowed to do so by fair and honourable means only and of course without forsaking his loyalty to law. That means a lawyer is not a hired unscrupulous aggressor targeting his fee only. He cannot act like such a person. Apart from this, lawyers cannot completely ignore the service element*

involved in their profession. The so called nobility of the profession he cannot buy by money. It is achieved only by dedication and loyalty to the law and to the legal system.

- *The question is not of defending or offending anybody, sir. The question is actually of diagnosis and of making repairs to the system. Today's lawyer is tomorrow's judge is the fact. A lawyer becoming judge does not involve any metamorphosis. A Judge carries with him only what he had when he was a lawyer. So a 'good' lawyer only can become a 'good' judge, though we are attempting to unlearn this lesson by appointing persons without Bar experience as our judges. Commitment is the core issue, not who pays the judges or who pays the lawyers. We cannot expect judges becoming committed if we do not have committed lawyers. Mr. Alarm Zada Khan has said (though from a different perspective) it well: "A judge alone cannot expedite administration of justice in Indian judiciary".*

V

'Speedy justice' and the exuberant 'summer vacation for Courts'- a paradox

We speak of 'speedy justice' as if, by that we mean it is the ideal pace at which our Judiciary should function to deliver justice to the people. But actually, 'speedy justice' is an idea came to the surface only as a means to tackle the bad omen of backlog of cases, which, in turn, is mainly the after effect of unduly slower pace at which the Judiciary (of which lawyers an integral part) has been functioning in our country.

The huge backlog has created a vicious circle which stands in the way of delivering even delayed justice to the people. So, first of all we should do away with the backlog which is the stumbling block, there is no doubt. Of course, to 'speed up' the process of adjudication is a means to reach this end. But at this point it is to be kept in mind that 'speeding up' does not and should not mean 'hurrying up', because people is aware that justice hurried is justice buried.

The point is that "speedy justice" is only a stopgap or makeshift arrangement to tackle the backlog and that it cannot be the ideal or permanent arrangement for delivering justice. Then what is the ideal arrangement we must go for? The ideal arrangement is an arrangement which ensures timely justice. What we need for our people is timely justice and not speedy justice.

Now, whatever be our need, be it speedy justice or timely justice, we see our Courts are going to slip into their usual annual summer-slumber suspending all the efforts at the delivery of 'justice', 'speedy justice' and 'timely justice'. For 45 days….all our man and machinery set up engineered, geared up and fuelled up at the huge expense of the people for delivering justice to them is stagnant, that too without saving even a single Rupee from the huge running capital during this period… for what?... to speed up speedy justice or to get over the pain of delayed justice or to attune to timely justice? The query demands a proper explanation and answer from all concerned. Are we supposed to tolerate this extreme sort of expensive inertia?

If such period of hibernation is justifiable, then.., is not all the hue and cry over delayed justice hypocrisy only, on the part of all those who claim themselves to be worried over the unfortunate

situation created by delayed justice, and over backlog? King knows he is naked. But he wants the people believe he is clad royally. None has the morale to give one's tongue to what actually happens. Hypocrisy is what we believe in, in our personal, social and political life…

Optimizing people-judge ratio is considered to be the actual remedy for tackling delayed Justice. However, Indian legal system is notorious for its miserable people-judge ratio. And we are reluctant to work on that direction for reasons not known or reasons unintelligible. Anyhow, the point here is this: a country with such low number of judges when compared with its huge population, and the available judges are not working too roughly for about one-third of an year... where are we to? JDS (Justice Delivery System) giving way to ADR (Alternative Dispute Resolution mechanism)? Is adjudication something becoming condemnable, 'untouchable' for us?

Courts working during summer vacation will definitely have the effect of establishing some additional courts. It will be interesting to calculate how many of them….it is not a very small thing. Is not summer vacation also a relic of colonial past? Something practiced by the colonialists over our people, the exploited?

VI

Mullapperiyar verdict- Apex Court and our political leadership

Historical reasons or background (which facilitated evolving our judicial system) apart, we know that the Judiciary in India is the

creation of the Constitution. It is our constitutional resolution that we must accept and be obliged by the final verdict of the Apex Court on a point of dispute, supposing the verdict to be absolute and so to be inviolable. We resolved so not because we believe in a principle or rationale that judges, human beings, are infallible, but only because there we are at our wits' end without any better alternative. Appositely, our judges have accepted that infallibility is not a human virtue, thereby acknowledging that they may also commit mistakes, they may also err in their judgment. Adding to this, our judges are not fact-finders or truth-seekers owing to the adversarial system we follow, though we follow it justifiably. So Hon'ble judges of our Apex Court are helpless and unblemished even if they decide factually incorrect or even if the entire country catches fire ensuing such a decision. (I think, in this context, that the principle "an act of Court shall prejudice no man" is actually an alluring fiction only)

What simply follows is that we are risking if we make it a routine to carry all our disputes to Courts… risking our people's lives and risking their properties. So we must thoroughly discriminate before venturing litigating upon strategic facts and explosive issues if we want to ensure that the limits of our law and the limits of our adjudicatory system do not direct and expose us to the brink of encountering a conflagration. As a matter of fact, we know, in our system Judiciary is incapacitated in the exercise of this discrimination.

Coming to Mullapperiyar Dam issue, first of all we must identity that the issue over the Dam is one of such strategic and explosive issues which should not have been carried into Court, because we cannot run the risk of an incorrect verdict on the issue, again because lives and properties of lakhs of people is at

stake, if we may believe the stand of those who share that anxiety to be true. Who is guilty then in procuring a verdict on the Mullapperiyar Dam issue without discriminating how that course of action is going to affect the helpless people and their properties, and what prompted them to pursue that irresponsible course of action? The question is out of place because even our children know that the culprits are none other than the politicians who acquire executive and legislative powers from us promising us to protect our lives and properties and then make it a point to habitually and as of right betray us by throwing us away as napkins after their use.

Power of the Court is primarily confined to declaring what appears to it to be the fact and what it finds to be the law. It is incapacitated to create new facts on its own, or to change the original state or position of the facts in dispute, or to change the law, or to make law independently. Creating new facts, introducing change into existing facts or doing away with them etc. is the area of the Executive, and making new law, changing the existing law or deleting any law etc. is the area of the Legislature. Judiciary is forbidden from travelling in those areas earmarked for the other two limbs. Each limb should perform the functions and duties assigned to it confining to its own limits. If any one of them shirks its obligations or passes on its duties to any other limb, then democracy will be at a deadlock and people will be put to suffer.

'Petty politics' and their own 'political mileage' is the ideology of our politicians whatever may the matter be they are dealing with. This is what has happened in Mullapperiyar also. They ignored their constitutional obligations and duties to the people for the sake of their petty politics. Knowing fully that judicial

resolution will not heal the crisis at Mullapperiyar, the matter was dragged into the Court by the political leadership with the intention to create false impression in the minds of the people that the Court is the proper venue for chalking out a solution for the problem, calculating to save their face by making Judiciary a scapegoat.

Whether the Apex Court put its maximum effort in persuading the Governments to draw a political solution to the problem and whether the Hon'ble Court took utmost care to ensure that it does not give a factually incorrect verdict are yet two other important points assuming relevance.

VII

Principles of Fundamental Justice and our High Court

Suit filed in 2013, pending issues be framed, becomes infructuous on account of an illegal act accomplished by defendants, that too by violating ad-interim order of injunction subsisting against them in the suit. Plaintiffs obtain time for amending the plaint, and meanwhile on 31-05-2013 they initiate proceedings seeking to punish defendants for the violation. Receiving counter statement in the petition only on 12-02-2014, the Court posts it for enquiry on 24-03-2014 and then to 21-05-2014.

At that stage of the lis, and to the utter dismay of the plaintiffs, on 21-05-2014 defendants produced an order pronounced by the Hon'ble High Court on 28-03-2014 directing the Munsiff to dispose of the petition under Order 39, Rule 2A first on or before 31-05-2014, then the injunction petition on or before 30-06-2014 and finally the suit on or before 31-08-2014.

Obviously, the Hon'ble High Court passed the order at the instance of the defendants and that too even without notice (sic) to the Masters of the suit. But the exigency and justice of the situation which weighed with the High Court while passing such an order in transgression of all the rules of judicial procedure and principles of fundamental justice is not perceivable from the order, which is not speaking one.

Justifiably, the Presiding Officer is in a haste to comply with the order of the Hon'ble High Court. On 21-05-2014 plaintiffs filed petition seeking leave to amend the plaint and that was allowed on 30-06-2014 and the case was posted for additional written statement. The order of the Court on 21-07-2014 "Written statement seen received only today, issues framed, listed to 02-08-2014" reveals nothing but the enthusiasm of the Court to act as directed by the Hon'ble High Court. The paradox is that plaintiffs have been asked to get ready for trial of a civil suit even before settling issues in the case. Actually 'the issues' involved in these incidents loom large…I need not delineate further…I stop by posing a question:

Is there any category of suits our Hon'ble High Court recognizes, for any reason, not deserving a 'decent disposal', say, even by denying the safeguard, protection or benefits of principles of Fundamental Justice to the dominus litis? Can the High Court dismiss application of adjective laws in the matter of disposal of any proceeding, whatever the High Court feels regarding the merits of that proceeding?

VIII

Modi and Democracy

Democracy is not autocracy in disguise. Democracy is not about what one person is able to do for the whole people. It is about decentralizing power as opposed to concentrating power in a single person. It is not about citizens putting a person or a few persons into power by casting their votes ritualistically and stay apart, it is about all citizens participating in the political process and them taking part in the governance. It is actually a mechanism to prevent power from being concentrated in a single person for the reason that power corrupts and absolute power corrupts absolutely making people's life miserable. But against all these real facts, man always has an odd tendency to be worshiping heroes or idols and having relentless faith in them. And we have chosen, though at the cost of democracy and its core make ups of representativeness and collective responsibility, a person accrediting and acclaiming him to be such a hero to be our 'ruler' to do magical things for the country with the expectation that he is able to change the lives of 127 cores of Indian people. By our mandate we are now turning our eyes to that magical man with hope. We must respect him for he is the 'chosen one' of our people. And let us see what he is going to do while hoping for the best....

IX

Secularism or Hunger?

It seems, Deepika Govind has expressed (http://allindiaroundup.com/…/question-by-a-secular-hindu-t…/) the

true sentiments of an ordinary upright Hindu. The sentiments certainly have their own place, value and relevance also. Actually, secularism is only one among the finest of the principles/ precepts of the all-inclusive and all-encompassing horizon of Hinduism. However, Hinduism becomes not what it actually is without that all-embracing principle. And one needs to learn that it is this particular precept of Hinduism that we have instilled into our Constitution in the name of the so called Indian secularism- coexistence of all religions, all paths- to God. No other religion has grown into such a stature. A Hindu is free to choose any religion. Is there any other religion that gives this freedom?

Just like any other provisions of the Constitution, provisions relating to minorities are also being manipulated- this is the root cause for the emergence of the atmosphere that give way to the springing up of the sentiments and anxieties as expressed by persons like Deepika Govind. Minorities have the obligation to rise to the occasion- this is the right remedy to save our secularism and nationalism.

Whatever, the unfortunate thing is this- the real and the foremost problem that India faces is not something related to secularism etc. Hunger of millions and millions of people in India is the first issue that we need to find a solution for. Hunger facts relating to India is heartbreaking...men, women and children die of hunger...why these naked facts do not stir our sentiments...? Don't we need to forget the history and the events that may happen in the future at least for some time in order to tackle the hunger of our fellow countrymen, which need a real-time attention?

X

The Indian Goddess of Justice

In his departing speech, our Judicial Officer expressed his disapproval over using Greek Goddess as our symbol of justice and he wished an Indian symbol be introduced in its place. Our Judges need to "see with open eyes" and "hear with open ears" for doing justice in our situation and so we don't want a Goddess of Justice with a blindfold, is his view. My doubt is, does the blindfold of Lady Justice carry that her physical eyes are "blind"? Does our system demands our judges to be blind and deaf in that sense and makes them helpless in doing justice according to law and conscience? Is it because of that helplessness that we fail in administering justice as we experience it today? Judges with unbridled powers would revolutionise justice delivery?

XI

Death Penalty?

The essential question is: is not killing for killing savage? If it is not basically savage, you may kill the killer, because there your claim is that your instinct to kill is different from that of the Killer. Simply, your instinct to kill is civilised. Well and good for you. But don't entertain that those who feel and view killing for killing as savage share the same feeling that the killer has towards his prey and its dears. Their helplessness is that they cry for the killed and for the killer as well. As for now law may be representing the will of "the civilised" and not "the helpless". But since law is dynamic it may change when the will of "the helpless" become stronger. Freedom of expression is all inclusive in democracy.

Don't deny it to "the savage" who opposes death penalty. Let there be a healthy debate on the issue. One point is relevant- avenging has no legal recognition in our system. State's penal policy has to be distinctly viewed from the individual's standpoint on the mode, quantum or quality of punishments.

XII

The weeping Chief Justice of India

Really awkward is the scene where we find our Hon'ble Chief Justice struggling to contain his emotion before the Executive leadership of the country. Was that the first moment in His Lordship's life on which His Lordship came to learn the magnitude of the work and responsibility that is tasked on the shoulders of the Judiciary? Is it that our Executive heads need to pull our judges together for sensitising them with respect to their assignments? Are we putting independence of our Judiciary at risk?

XIII

Amazing India

To be really proud, we have eradicated poverty once and for ever from our country! There has been only a minute section of our country who (only) has been struggling to make both ends meet with their daily mean income of below Rs. 600/-. Alas, they have been the poor, but the glorious, public servants of our country of the affluents. Now our benevolent Government has spotted them out and has guaranteed a minimum of Rs. 18,000/- per month for these hapless people who had been destined to live in misery amidst plenty. Now, amazing India!

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JUDICIARY, A PANACEA WITH NO CURE?

-On mending our Judiciary, Democracy and the Polity-

A very thought provoking text. The author has ventured to voice what is thought and felt by many, within and without the fraternity of law. Apart from the ring of truth the writing has the ring of sincerity that is unmistakeable. There is also an underlying pathos and muted agony.... There may be people who are tempted to say "Fools rush in where Angels fear to tread" on reading it, but the writer's consolation can be that many of his contemporaries considered Socrates to be a fool...

(A lawyer prefers to be anonymous)

Author's rhetorical question "Is not democracy 'Lawocracy', then?" rings throughout… It is an excellent piece on the Rule of Law and Judiciary. As there is no panacea for the many ills that plague the polity so the process of meting out justice in a half baked democracy is a never ending saga. "There is no life, there is no death. There is only the soul seeking higher and higher stages of truth" (Gandhi). Since the work exposes the underbelly of a section of the Judiciary, the author is likely to be singled out by the robed brethren and the vested interests... the author is meant to go ahead.

Sachindranath